
SENATE BILL 5449

State of Washington**66th Legislature****2019 Regular Session**

By Senators Keiser, King, Llias, Wellman, Saldaña, Conway, Hunt, and Wilson, C.; by request of Employment Security Department

Read first time 01/21/19. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to paid family and medical leave; amending RCW
2 50A.04.010, 50A.04.015, 50A.04.020, 50A.04.025, 50A.04.030,
3 50A.04.035, 50A.04.040, 50A.04.045, 50A.04.055, 50A.04.060,
4 50A.04.065, 50A.04.070, 50A.04.075, 50A.04.080, 50A.04.085,
5 50A.04.090, 50A.04.095, 50A.04.100, 50A.04.105, 50A.04.110,
6 50A.04.115, 50A.04.120, 50A.04.125, 50A.04.145, 50A.04.160,
7 50A.04.165, 50A.04.170, 50A.04.175, 50A.04.185, 50A.04.195,
8 50A.04.200, 50A.04.205, 50A.04.215, 50A.04.220, 50A.04.225,
9 50A.04.230, 50A.04.235, 50A.04.240, 50A.04.245, 50A.04.250,
10 50A.04.255, 50A.04.260, 50A.04.265, 50A.04.505, 50A.04.510,
11 50A.04.520, 50A.04.525, 50A.04.540, 50A.04.550, 50A.04.555,
12 50A.04.560, 50A.04.565, 50A.04.580, 50A.04.590, 50A.04.595,
13 50A.04.600, 50A.04.610, 50A.04.615, 50A.04.625, 50A.04.645,
14 50A.04.650, 50A.04.655, 50A.04.660, 50A.04.900, 50.29.021,
15 43.20A.080, and 42.56.410; reenacting and amending RCW 26.23.060;
16 adding new chapters to Title 50A RCW; recodifying RCW 50A.04.005,
17 50A.04.010, 50A.04.195, 50A.04.200, 50A.04.205, 50A.04.210,
18 50A.04.215, 50A.04.220, 50A.04.225, 50A.04.235, 50A.04.255,
19 50A.04.265, 50A.04.900, 50A.04.105, 50A.04.110, 50A.04.115,
20 50A.04.120, 50A.04.125, 50A.04.015, 50A.04.020, 50A.04.030,
21 50A.04.035, 50A.04.040, 50A.04.045, 50A.04.050, 50A.04.055,
22 50A.04.060, 50A.04.065, 50A.04.240, 50A.04.250, 50A.04.230,
23 50A.04.600, 50A.04.605, 50A.04.610, 50A.04.615, 50A.04.620,

1 50A.04.625, 50A.04.630, 50A.04.635, 50A.04.640, 50A.04.645,
2 50A.04.650, 50A.04.655, 50A.04.660, 50A.04.665, 50A.04.025,
3 50A.04.245, 50A.04.260, 50A.04.085, 50A.04.095, 50A.04.100,
4 50A.04.090, 50A.04.130, 50A.04.135, 50A.04.140, 50A.04.145,
5 50A.04.150, 50A.04.155, 50A.04.160, 50A.04.165, 50A.04.170,
6 50A.04.175, 50A.04.180, 50A.04.185, 50A.04.190, 50A.04.500,
7 50A.04.505, 50A.04.510, 50A.04.515, 50A.04.520, 50A.04.525,
8 50A.04.530, 50A.04.535, 50A.04.540, 50A.04.545, 50A.04.550,
9 50A.04.555, 50A.04.560, 50A.04.565, 50A.04.570, 50A.04.575,
10 50A.04.580, 50A.04.585, 50A.04.590, 50A.04.595, 50A.04.070,
11 50A.04.075, and 50A.04.080; and prescribing penalties.

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

13 **Sec. 1.** RCW 50A.04.010 and 2018 c 141 s 1 are each amended to
14 read as follows:

15 Unless the context clearly requires otherwise, the definitions in
16 this section apply throughout this (~~chapter~~) title.

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

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

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

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

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

28 (5) "Employee's average weekly wage" means the quotient derived
29 by dividing the employee's total wages during the two quarters of the
30 employee's qualifying period in which total wages were highest by
31 twenty-six. If the result is not a multiple of one dollar, the
32 department must round the result to the next lower multiple of one
33 dollar.

34 (6) (a) "Employer" means: (i) Any individual or type of
35 organization, including any partnership, association, trust, estate,
36 joint stock company, insurance company, limited liability company, or
37 corporation, whether domestic or foreign, or the receiver, trustee in
38 bankruptcy, trustee, or the legal representative of a deceased

1 person, having any person in employment or, having become an
2 employer, has not ceased to be an employer as provided in this
3 (~~chapter~~) title; (ii) the state, state institutions, and state
4 agencies; and (iii) any unit of local government including, but not
5 limited to, a county, city, town, municipal corporation,
6 quasi-municipal corporation, or political subdivision.

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

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

15 (i) The service is localized in this state; or

16 (ii) The service is not localized in any state, but some of the
17 service is performed in this state; and

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

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

25 (b) "Employment" does not include:

26 (i) Self-employed individuals;

27 (ii) Services for remuneration when it is shown to the
28 satisfaction of the commissioner that:

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

32 (II) Such service is either outside the usual course of business
33 for which such service is performed, or that such service is
34 performed outside of all the places of business of the enterprises
35 for which such service is performed; and

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

39 (B) As a separate alternative:

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

4 (II) Such service is either outside the usual course of business
5 for which such service is performed, or that such service is
6 performed outside of all the places of business of the enterprises
7 for which such service is performed, or the individual is
8 responsible, both under the contract and in fact, for the costs of
9 the principal place of business from which the service is performed;
10 and

11 (III) Such individual is customarily engaged in an independently
12 established trade, occupation, profession, or business, of the same
13 nature as that involved in the contract of service, or such
14 individual has a principal place of business for the work the
15 individual is conducting that is eligible for a business deduction
16 for federal income tax purposes; and

17 (IV) On the effective date of the contract of service, such
18 individual is responsible for filing at the next applicable filing
19 period, both under the contract of service and in fact, a schedule of
20 expenses with the internal revenue service for the type of business
21 the individual is conducting; and

22 (V) On the effective date of the contract of service, or within a
23 reasonable period after the effective date of the contract, such
24 individual has established an account with the department of revenue,
25 and other state agencies as required by the particular case, for the
26 business the individual is conducting for the payment of all state
27 taxes normally paid by employers and businesses and has registered
28 for and received a unified business identifier number from the state
29 of Washington; and

30 (VI) On the effective date of the contract of service, such
31 individual is maintaining a separate set of books or records that
32 reflect all items of income and expenses of the business which the
33 individual is conducting; or

34 (iii) Services that require registration under chapter 18.27 RCW
35 or licensing under chapter 19.28 RCW rendered by an individual when:

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

39 (B) The service is either outside the usual course of business
40 for which the service is performed, or the service is performed

1 outside of all the places of business of the enterprise for which the
2 service is performed, or the individual is responsible, both under
3 the contract and in fact, for the costs of the principal place of
4 business from which the service is performed;

5 (C) The 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 the individual
8 has a principal place of business for the business the individual is
9 conducting that is eligible for a business deduction for federal
10 income tax purposes, other than that furnished by the employer for
11 which the business has contracted to furnish services;

12 (D) On the effective date of the contract of service, the
13 individual is responsible for filing at the next applicable filing
14 period, both under the contract of service and in fact, a schedule of
15 expenses with the internal revenue service for the type of business
16 the individual is conducting;

17 (E) On the effective date of the contract of service, or within a
18 reasonable period after the effective date of the contract, the
19 individual has an active and valid certificate of registration with
20 the department of revenue, and an active and valid account with any
21 other state agencies as required by the particular case, for the
22 business the individual is conducting for the payment of all state
23 taxes normally paid by employers and businesses and has registered
24 for and received a unified business identifier number from the state
25 of Washington;

26 (F) On the effective date of the contract of service, the
27 individual is maintaining a separate set of books or records that
28 reflect all items of income and expenses of the business that the
29 individual is conducting; and

30 (G) On the effective date of the contract of service, the
31 individual has a valid contractor registration pursuant to chapter
32 18.27 RCW or an electrical contractor license pursuant to chapter
33 19.28 RCW.

34 (8) "Employment benefits" means all benefits provided or made
35 available to employees by an employer, including group life
36 insurance, health insurance, disability insurance, sick leave, annual
37 leave, educational benefits, and pensions (~~except benefits that are
38 provided by a practice or written policy of an employer or through an
39 employee benefit plan as defined in 29 U.S.C. Sec. 1002(3))~~).

1 (9) "Family leave" means any leave taken by an employee from
2 work:

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

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

9 (c) Because of any qualifying exigency as permitted under the
10 federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(E)
11 and 29 C.F.R. Sec. 825.126(~~((a))~~) (b)(1) through (~~((8))~~) (9), as they
12 existed on October 19, 2017, for family members as defined in
13 subsection (10) of this section.

14 (10) "Family member" means a child, grandchild, grandparent,
15 parent, sibling, or spouse of an employee.

16 (11) "Grandchild" means a child of the employee's child.

17 (12) "Grandparent" means a parent of the employee's parent.

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

24 (14) "Medical leave" means any leave taken by an employee from
25 work made necessary by the employee's own serious health condition.

26 (15) "Parent" means the biological, adoptive, de facto, or foster
27 parent, stepparent, or legal guardian of an employee or the
28 employee's spouse, or an individual who stood in loco parentis to an
29 employee when the employee was a child.

30 (16) "Period of incapacity" means an inability to work, attend
31 school, or perform other regular daily activities because of a
32 serious health condition, treatment of that condition or recovery
33 from it, or subsequent treatment in connection with such inpatient
34 care.

35 (17) "Premium" or "premiums" means the payments required by RCW
36 50A.04.115 (as recodified by this act) and paid to the department for
37 deposit in the family and medical leave insurance account under RCW
38 50A.04.220 (as recodified by this act).

39 (18) "Qualifying period" means the first four of the last five
40 completed calendar quarters or, if eligibility is not established,

1 the last four completed calendar quarters immediately preceding the
2 application for leave.

3 (19) (a) "Remuneration" means all compensation paid for personal
4 services including commissions and bonuses and the cash value of all
5 compensation paid in any medium other than cash.

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

15 (c) Remuneration also includes settlements or other proceeds
16 received by an individual as a result of a negotiated settlement for
17 termination of an individual written employment contract prior to its
18 expiration date. The proceeds are deemed assigned in the same
19 intervals and in the same amount for each interval as compensation
20 was allocated under the contract.

21 (d) Remuneration does not include:

22 (i) The payment of tips;

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

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

30 (20) (a) "Serious health condition" means an illness, injury,
31 impairment, or physical or mental condition that involves:

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

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

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

1 (I) Treatment two or more times, within thirty days of the first
2 day of incapacity, unless extenuating circumstances exist, by a
3 health care provider, by a nurse or physician's assistant under
4 direct supervision of a health care provider, or by a provider of
5 health care services, such as a physical therapist, under orders of,
6 or on referral by, a health care provider; or

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

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

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

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

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

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

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

28 (E) Any period of absence to receive multiple treatments,
29 including any period of recovery from the treatments, by a health
30 care provider or by a provider of health care services under orders
31 of, or on referral by, a health care provider, either for: (I)
32 Restorative surgery after an accident or other injury; or (II) a
33 condition that would likely result in a period of incapacity of more
34 than three consecutive, full calendar days in the absence of medical
35 intervention or treatment, such as cancer, severe arthritis, or
36 kidney disease.

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

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

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

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

26 (f) Conditions for which cosmetic treatments are administered,
27 such as most treatments for acne or plastic surgery, are not serious
28 health conditions unless inpatient hospital care is required or
29 unless complications develop. Ordinarily, unless complications arise,
30 the common cold, the flu, ear aches, upset stomach, minor ulcers,
31 headaches other than migraines, routine dental or orthodontia
32 problems, and periodontal disease are examples of conditions that are
33 not serious health conditions and do not qualify for leave under this
34 ((chapter)) title. Restorative dental or plastic surgery after an
35 injury or removal of cancerous growths are serious health conditions
36 provided all the other conditions of this section are met. Mental
37 illness resulting from stress or allergies may be serious health
38 conditions, but only if all the conditions of this section are met.

39 (g)(i) Substance abuse may be a serious health condition if the
40 conditions of this section are met. However, leave may only be taken

1 for treatment for substance abuse by a health care provider or by a
2 licensed substance abuse treatment provider. Absence because of the
3 employee's use of the substance, rather than for treatment, does not
4 qualify for leave under this (~~(chapter)~~) title.

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

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

30 (~~((20))~~) (21) "Service is localized in this state" has the same
31 meaning as described in RCW 50.04.120.

32 (~~((21))~~) (22) "Spouse" means a husband or wife, as the case may
33 be, or state registered domestic partner.

34 (~~((22))~~) (23) "State average weekly wage" means the most recent
35 average weekly wage calculated under RCW 50.04.355 and available on
36 January 1st of each year.

37 (~~((23))~~) (24) "Typical workweek hours" means:

38 (a) For an hourly employee, the average number of hours worked
39 per week by an employee since the beginning of the qualifying period;
40 and

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

3 (~~((24))~~) (25) "Wage" or "wages" means (~~(the same as "wages" under~~
4 ~~RCW 50.04.320(2), except that)~~):

5 (~~(The term employment as used in RCW 50.04.320(2) is defined~~
6 ~~in this chapter)~~) For the purpose of premium assessment, the
7 remuneration paid by an employer to an employee. The maximum wages
8 subject to a premium assessment are those wages as set by the
9 commissioner under RCW 50A.04.115(4) (as recodified by this act);
10 (and)

11 (~~(the maximum wages subject to a premium assessment are those~~
12 ~~wages as set by the commissioner under RCW 50A.04.115(4). "Wages")~~)
13 For the purpose of payment of benefits, the remuneration paid by one
14 or more employers to an employee for employment during the employee's
15 qualifying period. At the request of an employee, wages may be
16 calculated on the basis of remuneration payable. The department shall
17 notify each employee that wages are calculated on the basis of
18 remuneration paid, but at the employee's request a redetermination
19 may be performed and based on remuneration payable; and

20 (c) For the purpose(~~(s)~~) of (~~(elective)~~) a self-employed person
21 electing coverage under RCW 50A.04.105 (~~(has)~~) (as recodified by this
22 act), the meaning (~~(as)~~) is defined by rule.

23 **Sec. 2.** RCW 50A.04.015 and 2017 3rd sp.s. c 5 s 3 are each
24 amended to read as follows:

25 Employees are eligible for family and medical leave benefits as
26 provided in this (~~(chapter)~~) title after working for at least eight
27 hundred twenty hours in employment during the qualifying period.

28 **Sec. 3.** RCW 50A.04.020 and 2017 3rd sp.s. c 5 s 6 are each
29 amended to read as follows:

30 (1)(a) Beginning January 1, 2020, family and medical leave are
31 available and benefits are payable to a qualified employee under this
32 section. Following a waiting period consisting of the first seven
33 consecutive calendar days of leave, benefits are payable when family
34 or medical leave is required. However, no waiting period is required
35 for leave for the birth or placement of a child. The waiting period
36 begins when an otherwise eligible employee takes leave for the
37 minimum claim duration under subsection (2)(c) of this section.

1 **(b)** Benefits may continue during the continuance of the need for
2 family and medical leave, subject to the maximum and minimum weekly
3 benefits, duration, and other conditions and limitations established
4 in this ~~((chapter))~~ title. Successive periods of family and medical
5 leave caused by the same or related injury or sickness are deemed a
6 single period of family and medical leave only if separated by less
7 than four months.

8 (2) The weekly benefit shall be prorated by the percentage of
9 hours on leave compared to the number of hours provided as the
10 typical workweek hours as defined in RCW 50A.04.010 (as recodified by
11 this act).

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

14 (b) Hours on leave claimed for benefits under this ~~((chapter))~~
15 title, if not a multiple of one hour, shall be reduced to the next
16 lower multiple of one hour.

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

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

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

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

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

1 ~~fifty percent~~) one-half of the state average weekly wage; and (ii)
2 fifty percent of the difference of the employee's average weekly wage
3 (~~that is greater than fifty percent~~) and one-half of the state
4 average weekly wage.

5 (5) (a) The maximum weekly benefit for family and medical leave
6 that occurs on or after January 1, 2020, shall be one thousand
7 dollars. By September 30, 2020, and by each subsequent September
8 30th, the commissioner shall adjust the maximum weekly benefit amount
9 to ninety percent of the state average weekly wage. The adjusted
10 maximum weekly benefit amount takes effect on the following January
11 1st.

12 (b) The minimum weekly benefit shall not be less than one hundred
13 dollars per week except that if the employee's average weekly wage at
14 the time of family and medical leave is less than one hundred dollars
15 per week, the weekly benefit shall be the employee's full wage.

16 **Sec. 4.** RCW 50A.04.025 and 2017 3rd sp.s. c 5 s 31 are each
17 amended to read as follows:

18 (1) Except as provided in RCW 50A.04.600(5) (as recodified by
19 this act) and subsection (6) of this section, any employee who takes
20 family or medical leave under this (~~chapter~~) title is entitled, on
21 return from the leave:

22 (a) To be restored by the employer to the position of employment
23 held by the employee when the leave commenced; or

24 (b) To be restored by the employer to an equivalent position with
25 equivalent employment benefits, pay, and other terms and conditions
26 of employment.

27 (2) The taking of leave under this (~~chapter~~) title may not
28 result in the loss of any employment benefits accrued before the date
29 on which the leave commenced.

30 (3) Nothing in this section shall be construed to entitle any
31 restored employee to:

32 (a) The accrual of any seniority or employment benefits during
33 any period of leave; or

34 (b) Any right, benefit, or position of employment other than any
35 right, benefit, or position to which the employee would have been
36 entitled had the employee not taken the leave.

37 (4) As a condition of restoration under subsection (1) of this
38 section for an employee who has taken medical leave, the employer may
39 have a uniformly applied practice or policy that requires each such

1 employee to receive certification from the employee's health care
2 provider that the employee is able to resume work.

3 (5) Nothing in this section shall be construed to prohibit an
4 employer from requiring an employee on leave to report periodically
5 to the employer on the status and intention of the employee to return
6 to work.

7 (6) (a) This section does not apply unless the employee: (i) Works
8 for an employer with fifty or more employees; (ii) has been employed
9 by the current employer for twelve months or more; and (iii) has
10 worked for the current employer for at least one thousand two hundred
11 fifty hours during the twelve months immediately preceding the date
12 on which leave will commence. For the purposes of this subsection, an
13 employer shall be considered to employ fifty or more employees if the
14 employer employs fifty or more employees for each working day during
15 each of twenty or more calendar workweeks in the current or preceding
16 calendar year.

17 (b) An employer may deny restoration under this section to any
18 salaried employee who is among the highest paid ten percent of the
19 employees employed by the employer within seventy-five miles of the
20 facility at which the employee is employed if:

21 (i) Denial is necessary to prevent substantial and grievous
22 economic injury to the operations of the employer;

23 (ii) The employer notifies the employee of the intent of the
24 employer to deny restoration on such basis at the time the employer
25 determines that the injury would occur; and

26 (iii) The leave has commenced and the employee elects not to
27 return to employment after receiving the notice.

28 **Sec. 5.** RCW 50A.04.030 and 2017 3rd sp.s. c 5 s 12 are each
29 amended to read as follows:

30 (1) If the necessity for leave for the birth or placement of a
31 child with the employee is foreseeable based on an expected birth or
32 placement, the employee shall provide the employer with not less than
33 thirty days' notice, before the date the leave is to begin, of the
34 employee's intention to take leave for the birth or placement of a
35 child, except that if the date of the birth or placement requires
36 leave to begin in less than thirty days, the employee shall provide
37 such notice as is practicable.

1 (2) If the necessity for leave for a family member's serious
2 health condition or the employee's serious health condition is
3 foreseeable based on planned medical treatment, the employee:

4 (a) Must make a reasonable effort to schedule the treatment so as
5 not to disrupt unduly the operations of the employer, subject to the
6 approval of the health care provider of the employee or the health
7 care provider of the family member, as appropriate; and

8 (b) Must provide the employer with not less than thirty days'
9 notice, before the date the leave is to begin, of the employee's
10 intention to take leave for a family member's serious health
11 condition or the employee's serious health condition, except that if
12 the date of the treatment requires leave to begin in less than thirty
13 days, the employee must provide such notice as is practicable.

14 (3) The employer may waive any or all of the employee notice
15 requirements in this section and in RCW 50A.04.035(1)(f) (as
16 recodified by this act).

17 **Sec. 6.** RCW 50A.04.035 and 2017 3rd sp.s. c 5 s 13 are each
18 amended to read as follows:

19 (1) Family and medical leave insurance benefits are payable to an
20 employee during a period in which the employee is unable to perform
21 his or her regular or customary work because he or she is on family
22 and medical leave if the employee:

23 (a) Files an application for benefits as required by rules
24 adopted by the commissioner;

25 (b) Has met the eligibility requirements of RCW 50A.04.015 (as
26 recodified by this act) or the elective coverage requirements under
27 RCW 50A.04.105 (as recodified by this act);

28 (c) Consents to the disclosure of information or records deemed
29 private and confidential under state law. Initial disclosure of this
30 information and these records by another state agency to the
31 department is solely for purposes related to the administration of
32 this ~~((chapter))~~ title. Further disclosure of this information or
33 these records is subject to chapter ~~((50.13))~~ 50A.--- RCW ~~((and))~~
34 (the new chapter created in section 84 of this act), RCW
35 50A.04.195(3) (as recodified by this act), and RCW 50A.04.080 (as
36 recodified by this act);

37 ~~((Discloses whether or not he or she owes child support~~
38 ~~obligations as defined in RCW 50.40.050;~~

39 ~~(e))~~ Provides his or her social security number;

1 ~~((f))~~ (e) Provides a document authorizing the family member's
2 or employee's health care provider, as applicable, to disclose the
3 family member's or employee's health care information in the form of
4 the certification of a serious health condition;

5 ~~((g))~~ (f) Provides the employer from whom family and medical
6 leave is to be taken with written notice of the employee's intention
7 to take family leave in the same manner as an employee is required to
8 provide notice in RCW 50A.04.030 (as recodified by this act) and, in
9 the employee's initial application for benefits, attests that written
10 notice has been provided, unless notice has been waived by the
11 employer under RCW 50A.04.030(3) (as recodified by this act); and

12 ~~((h) If requested by the employer,)~~ (g) Provides documentation
13 of a military exigency, if requested by the employer.

14 (2) An employee who is not in employment for an employer at the
15 time of filing an application for benefits is exempt from subsection
16 (1) ~~((g))~~ (f) and ~~((h))~~ (g) of this section.

17 **Sec. 7.** RCW 50A.04.040 and 2017 3rd sp.s. c 5 s 7 are each
18 amended to read as follows:

19 (1) Benefits provided under this ~~(chapter)~~ title shall be paid
20 periodically and promptly, except when an employer contests a period
21 of family or medical leave. The department must send the first
22 benefit payment to the employee within fourteen calendar days after
23 the first properly completed weekly application is received by the
24 department. Subsequent payments must be sent at least biweekly
25 thereafter. If the employer contests an initial application for
26 family or medical leave benefits, the employer must notify the
27 employee and the department in a manner prescribed by the
28 commissioner within eighteen days of receipt of notice from the
29 department of the employee's filing of an application for benefits,
30 as provided under RCW 50A.04.195 (as recodified by this act). Failure
31 to timely contest an initial application shall constitute a waiver of
32 objection to the family or medical leave application. Any inquiry
33 which requires the employee's response in order to continue benefits
34 uninterrupted or unmodified shall provide a reasonable time period in
35 which to respond and include a clear and prominent statement of the
36 deadline for responding and consequences of failing to respond.

37 (2) If an employee has received one or more benefit payments
38 under this ~~(chapter)~~ title, is in continued claim status, and his
39 or her eligibility for benefits is questioned by the department or

1 contested by the employer, the employee will be conditionally paid
2 benefits without delay for any periods for which the employee files a
3 claim for benefits, until and unless the employee has been provided
4 adequate notice and an opportunity to be heard. The employee's right
5 to retain such payments is conditioned upon the department's finding
6 the employee to be eligible for such payments.

7 (a) At the employee's request, the department may hold
8 conditional payments until the question of eligibility has been
9 resolved.

10 (b) Payments will be issued for any benefits withheld under (a)
11 of this subsection if the department determines the employee is
12 eligible for benefits.

13 (c) If it is determined that the employee is ineligible for the
14 weeks paid conditionally, the overpayment cannot be waived and must
15 be repaid.

16 (3) The department must develop, in rule, a process by which an
17 employer may contest an initial application for family or medical
18 leave benefits.

19 **Sec. 8.** RCW 50A.04.045 and 2017 3rd sp.s. c 5 s 5 are each
20 amended to read as follows:

21 (1) An employee is not entitled to paid family or medical leave
22 benefits under this (~~chapter~~) title:

23 (a) For any absence occasioned by the willful intention of the
24 employee to bring about injury to or the sickness of the employee or
25 another, or resulting from any injury or sickness sustained in the
26 perpetration by the employee of an illegal act;

27 (b) For any family or medical leave commencing before the
28 employee becomes qualified for benefits under this (~~chapter~~) title;

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

31 (d) For any (~~day in~~) period of time during which a family or
32 medical leave care recipient works (~~at least part of that day~~) for
33 remuneration or profit (~~during the same or substantially similar~~
34 ~~working hours as those of the employer from which family or medical~~
35 ~~leave benefits are claimed, except that occasional scheduling~~
36 ~~adjustments with respect to secondary employments shall not prevent~~
37 ~~receipt of family or medical leave benefits)).~~

38 (2) An employer may (~~allow~~) offer supplemental benefit payments
39 to an employee (~~who has accrued~~) on family or medical leave in

1 addition to any paid family or medical leave benefits the employee is
2 receiving. Supplemental benefit payments include, but are not limited
3 to, vacation, sick, or other paid time off ((to choose whether: (a)
4 To take such leave; or (b) not to take such leave and receive paid
5 family or medical leave benefits, as provided in RCW 50A.04.020)).
6 The choice to receive supplemental benefit payments lies with the
7 employee. Nothing in this section shall be construed as requiring an
8 employee to receive or an employer to provide supplemental benefit
9 payments.

10 (3) An individual is disqualified for benefits for any week he or
11 she has knowingly and willfully made a false statement or
12 representation involving a material fact or knowingly and willfully
13 failed to report a material fact and, as a result, has obtained or
14 attempted to obtain any benefits under the provisions of this
15 ((chapter)) title. An individual disqualified for benefits under this
16 subsection (3) for the:

17 (a) First time is disqualified for an additional twenty-six weeks
18 beginning with the Sunday of the week in which the determination is
19 mailed or delivered, and is subject to an additional penalty of
20 fifteen percent of the amount of benefits overpaid or deemed
21 overpaid;

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

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

32 (4) All penalties collected under this section must be deposited
33 in the family and medical leave enforcement account created under RCW
34 50A.04.225 (as recodified by this act).

35 **Sec. 9.** RCW 50A.04.055 and 2017 3rd sp.s. c 5 s 80 are each
36 amended to read as follows:

37 (1) If the internal revenue service determines that family or
38 medical leave benefits under this ((chapter)) title are subject to
39 federal income tax, the department must advise an employee filing a

1 new application for benefits, at the time of filing such application,
2 that:

3 (a) The internal revenue service has determined that benefits are
4 subject to federal income tax;

5 (b) Requirements exist pertaining to estimated tax payments;

6 (c) The employee may elect to have federal income tax deducted
7 and withheld from the employee's payment of benefits at the amount
8 specified in the federal internal revenue code; and

9 (d) The employee is permitted to change a previously elected
10 withholding status.

11 (2) Amounts deducted and withheld from benefits must remain in
12 the family and medical leave insurance account until transferred to
13 the federal taxing authority as a payment of income tax.

14 (3) The commissioner shall follow all procedures specified by the
15 federal internal revenue service pertaining to the deducting and
16 withholding of income tax.

17 **Sec. 10.** RCW 50A.04.060 and 2017 3rd sp.s. c 5 s 30 are each
18 amended to read as follows:

19 If an employee (~~discloses that he or she~~) owes child support
20 obligations under RCW 50A.04.035 (as recodified by this act) and the
21 department determines that the employee is qualified for benefits,
22 the department shall notify the applicable state or local child
23 support enforcement agency and deduct and withhold an amount from
24 benefits in a manner consistent with RCW 50.40.050. Consistent with
25 RCW 50A.04.035(1)(c) (as recodified by this act), the department may
26 verify (~~delinquent~~) child support obligations with the department
27 of social and health services.

28 **Sec. 11.** RCW 50A.04.065 and 2017 3rd sp.s. c 5 s 32 are each
29 amended to read as follows:

30 (1) An individual who is paid any amount as benefits under this
31 (~~chapter~~) title to which he or she is not entitled shall, unless
32 otherwise relieved pursuant to this section, be liable for repayment
33 of the amount overpaid. The department shall issue an overpayment
34 assessment setting forth the reasons for and the amount of the
35 overpayment. The amount assessed, to the extent not collected, may be
36 deducted from any future benefits payable to the individual:
37 PROVIDED, That in the absence of a back pay award, a settlement
38 affecting the allowance of benefits, fraud, misrepresentation, or

1 willful nondisclosure, every determination of liability shall be
2 mailed or personally served not later than two years after the close
3 of or final payment made on the individual's applicable eligibility
4 period for which the purported overpayment was made, whichever is
5 later, unless the merits of the claim are subjected to administrative
6 or judicial review in which event the period for serving the
7 determination of liability shall be extended to allow service of the
8 determination of liability during the six-month period following the
9 final decision affecting the claim.

10 (2) The commissioner may waive an overpayment if the commissioner
11 finds that the overpayment was not the result of fraud,
12 misrepresentation, willful nondisclosure, conditional payment, or
13 fault attributable to the individual and that the recovery thereof
14 would be against equity and good conscience. An overpayment waived
15 under this subsection shall be charged against the individual's
16 applicable entitlement for the eligibility period containing the
17 weeks to which the overpayment was attributed as though such benefits
18 had been properly paid.

19 (3) Any assessment herein provided shall constitute a
20 determination of liability from which an appeal may be had in the
21 same manner and to the same extent as provided for appeals relating
22 to determinations in respect to claims for benefits: PROVIDED, That
23 an appeal from any determination covering overpayment only shall be
24 deemed to be an appeal from the determination which was the basis for
25 establishing the overpayment unless the merits involved in the issue
26 set forth in such determination have already been heard and passed
27 upon by the appeal tribunal. If no such appeal is taken to the appeal
28 tribunal by the individual within thirty days of the delivery of the
29 notice of determination of liability, or within thirty days of the
30 mailing of the notice of determination, whichever is the earlier, the
31 determination of liability shall be deemed conclusive and final.
32 Whenever any such notice of determination of liability becomes
33 conclusive and final, the commissioner, upon giving at least twenty
34 days' notice, using a method by which the mailing can be tracked or
35 the delivery can be confirmed, may file with the superior court clerk
36 of any county within the state a warrant in the amount of the notice
37 of determination of liability plus a filing fee under RCW
38 36.18.012(10). The clerk of the county where the warrant is filed
39 shall immediately designate a superior court cause number for the
40 warrant, and the clerk shall cause to be entered in the judgment

1 docket under the superior court cause number assigned to the warrant,
2 the name of the person(s) mentioned in the warrant, the amount of the
3 notice of determination of liability, and the date when the warrant
4 was filed. The amount of the warrant as docketed shall become a lien
5 upon the title to, and any interest in, all real and personal
6 property of the person(s) against whom the warrant is issued, the
7 same as a judgment in a civil case duly docketed in the office of
8 such clerk. A warrant so docketed shall be sufficient to support the
9 issuance of writs of execution and writs of garnishment in favor of
10 the state in the manner provided by law for a civil judgment. A copy
11 of the warrant shall be mailed within five days of its filing with
12 the clerk to the person(s) mentioned in the warrant using a method by
13 which the mailing can be tracked or the delivery can be confirmed.

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

25 (a) The employer shall reduce the amount of the back pay award or
26 settlement by an amount determined by the department based upon the
27 amount of paid family or medical leave benefits received by the
28 recipient of the award or settlement during the period for which the
29 back pay award or settlement was awarded;

30 (b) The employer shall pay to the paid family and medical leave
31 fund, in a manner specified by the commissioner, an amount equal to
32 the amount of such reduction;

33 (c) The employer shall also pay to the department any premiums
34 due for paid family and medical leave insurance purposes on the
35 entire amount of the back pay award or settlement notwithstanding any
36 reduction made pursuant to (a) of this subsection;

37 (d) If the employer fails to reduce the amount of the back pay
38 award or settlement as required in (a) of this subsection, the
39 department shall issue an overpayment assessment against the

1 recipient of the award or settlement in the amount that the back pay
2 award or settlement should have been reduced; and

3 (e) If the employer fails to pay to the department an amount
4 equal to the reduction as required in (b) of this subsection, the
5 department shall issue an assessment of liability against the
6 employer that shall be collected pursuant to the procedures for
7 collection of assessments provided herein and in RCW 50A.04.155 (as
8 recodified by this act).

9 (5) When an individual fails to repay an overpayment assessment
10 that is due and fails to arrange for satisfactory repayment terms,
11 the commissioner shall impose an interest penalty of one percent per
12 month of the outstanding balance. Interest shall accrue immediately
13 on overpayments assessed pursuant to RCW 50A.04.045 (as recodified by
14 this act) and shall be imposed when the assessment becomes final. For
15 any other overpayment, interest shall accrue when the individual has
16 missed two or more of the individual's monthly payments either
17 partially or in full.

18 (6) Any penalties and interest collected pursuant to this section
19 must be deposited into the family and medical leave enforcement
20 account.

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

26 **Sec. 12.** RCW 50A.04.070 and 2017 3rd sp.s. c 5 s 71 are each
27 amended to read as follows:

28 Whenever an employee of an employer who is qualified for benefits
29 under this ~~((chapter))~~ title is absent from work to provide family
30 leave, or take medical leave for more than seven consecutive days,
31 the employer shall provide the employee with a written statement of
32 the employee's rights under this ~~((chapter))~~ title in a form
33 prescribed by the commissioner. The statement must be provided to the
34 employee within five business days after the employee's seventh
35 consecutive day of absence due to family or medical leave, or within
36 five business days after the employer has received notice that the
37 employee's absence is due to family or medical leave, whichever is
38 later.

1 **Sec. 13.** RCW 50A.04.075 and 2017 3rd sp.s. c 5 s 75 are each
2 amended to read as follows:

3 Each employer shall post and keep posted, in conspicuous places
4 on the premises of the employer where notices to employees and
5 applicants for employment are customarily posted, a notice, to be
6 prepared or approved by the commissioner, setting forth excerpts
7 from, or summaries of, the pertinent provisions of this ((chapter))
8 title and information pertaining to the filing of a complaint. Any
9 employer that willfully violates this section may be subject to a
10 civil penalty of not more than one hundred dollars for each separate
11 offense. Any penalties collected by the department under this section
12 shall be deposited into the family and medical leave enforcement
13 account.

14 **Sec. 14.** RCW 50A.04.080 and 2017 3rd sp.s. c 5 s 33 are each
15 amended to read as follows:

16 (1) In the form and at the times specified in this ((chapter))
17 title and by the commissioner, an employer shall make reports,
18 furnish information, and collect and remit premiums as required by
19 this ((chapter)) title to the department. If the employer is a
20 temporary help company that provides employees on a temporary basis
21 to its customers, the temporary help company is considered the
22 employer for purposes of this section.

23 (2)(a) An employer must keep at the employer's place of business
24 a record of employment, for a period of six years, from which the
25 information needed by the department for purposes of this ((chapter))
26 title may be obtained. This record shall at all times be open to the
27 inspection of the commissioner.

28 (b) Information obtained under this ((chapter)) title from
29 employer records is confidential and not open to public inspection,
30 other than to public employees in the performance of their official
31 duties. However, an interested party shall be supplied with
32 information from employer records to the extent necessary for the
33 proper presentation of the case in question. An employer may
34 authorize inspection of the employer's records by written consent.

35 (3) The requirements relating to the collection of family and
36 medical leave premiums are as provided in this ((chapter)) title.
37 Before issuing a warning letter, the department shall enforce the
38 collection of premiums through conference and conciliation. These
39 requirements apply to:

1 (a) An employer that fails under this (~~chapter~~) title to make
2 the required reports, or fails to remit the full amount of the
3 premiums when due;

4 (b) An employer that willfully makes a false statement or
5 misrepresentation regarding a material fact, or willfully fails to
6 report a material fact, to avoid making the required reports or
7 remitting the full amount of the premiums when due under this
8 (~~chapter~~) title;

9 (c) A successor in the manner specified in RCW 50A.04.125 (as
10 recodified by this act); and

11 (d) An officer, member, or owner having control or supervision of
12 payment and/or reporting of family and medical leave premiums, or who
13 is charged with the responsibility for the filing of returns, in the
14 manner specified in RCW 50A.04.090 (as recodified by this act).

15 (4) Notwithstanding subsection (3) of this section, appeals are
16 governed by RCW 50A.04.500 (as recodified by this act).

17 **Sec. 15.** RCW 50A.04.085 and 2017 3rd sp.s. c 5 s 72 are each
18 amended to 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 (~~chapter~~)
22 title; or

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

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

28 (a) Filed any complaint, or has instituted or caused to be
29 instituted any proceeding, under or related to this (~~chapter~~)
30 title;

31 (b) Given, or is about to give, any information in connection
32 with any inquiry or proceeding relating to any right provided under
33 this (~~chapter~~) title; or

34 (c) Testified, or is about to testify, in any inquiry or
35 proceeding relating to any right provided under this (~~chapter~~)
36 title.

37 **Sec. 16.** RCW 50A.04.090 and 2017 3rd sp.s. c 5 s 68 are each
38 amended to read as follows:

1 (1) An employer who willfully fails to make the required reports
2 is subject to penalties as follows: (a) For the second occurrence,
3 the penalty is seventy-five dollars; (b) for the third occurrence,
4 the penalty is one hundred fifty dollars; and (c) for the fourth
5 occurrence and for each occurrence thereafter, the penalty is two
6 hundred fifty dollars.

7 (2) An employer who willfully fails to remit the full amount of
8 the premiums when due is liable, in addition to the full amount of
9 premiums due and amounts assessed as interest under RCW 50A.04.140
10 (as recodified by this act), to a penalty equal to the premiums and
11 interest.

12 (3) Any penalties under this section shall be deposited into the
13 family and medical leave enforcement account.

14 (4) For the purposes of this section, "willful" means a knowing
15 and intentional action that is neither accidental nor the result of a
16 bona fide dispute.

17 (5) The department shall enforce the collection of penalties
18 through conference and conciliation.

19 (6) These penalties may be appealed as provided in RCW 50A.04.500
20 through 50A.04.595 (as recodified by this act).

21 **Sec. 17.** RCW 50A.04.095 and 2017 3rd sp.s. c 5 s 73 are each
22 amended to read as follows:

23 Upon complaint by an employee, the commissioner shall investigate
24 to determine if there has been compliance with (~~this chapter~~) RCW
25 50A.04.085 (as recodified by this act) and the related rules
26 (adopted under this chapter). The department will issue a
27 determination including the findings of the investigation and whether
28 a violation may have occurred. Determinations are appealable under
29 chapter 50A.-- RCW (the new chapter created in section 93 of this
30 act). If the investigation indicates that a violation may have
31 occurred, a hearing (~~must~~) may be held if requested by an
32 interested party in accordance with chapter 34.05 RCW. The
33 commissioner must issue a written determination including the
34 commissioner's findings after the hearing. A judicial appeal from the
35 commissioner's determination may be taken in accordance with chapter
36 34.05 RCW.

37 **Sec. 18.** RCW 50A.04.100 and 2017 3rd sp.s. c 5 s 74 are each
38 amended to read as follows:

1 Any employer who violates RCW 50A.04.085 (as recodified by this
2 act) is liable for damages equal to:

3 (1) The amount of:

4 (a) Any wages, salary, employment benefits, or other compensation
5 denied or lost to such employee by reason of the violation; or

6 (b) In a case in which wages, salary, employment benefits, or
7 other compensation have not been denied or lost to the employee, any
8 actual monetary losses sustained by the employee as a direct result
9 of the violation, such as the cost of providing care, up to a sum
10 equal to wages or salary for the employee for up to sixteen weeks, or
11 eighteen weeks if the employee experiences a serious health condition
12 with a pregnancy that results in incapacity.

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

15 (b) For a willful violation, an additional amount as liquidated
16 damages equal to the sum of the amount described in subsection (1) of
17 this section and the interest described in this subsection (2). For
18 purposes of this section, "willful" means a knowing and intentional
19 action that is neither accidental nor the result of a bona fide
20 dispute.

21 **Sec. 19.** RCW 50A.04.105 and 2017 3rd sp.s. c 5 s 10 are each
22 amended to read as follows:

23 (1) For benefits payable beginning January 1, 2020, any self-
24 employed person, including a sole proprietor, independent contractor,
25 partner, or joint venturer, may elect coverage under this (~~chapter~~)
26 title for an initial period of not less than three years and
27 subsequent periods of not less than one year immediately following a
28 period of coverage. Those electing coverage under this section must
29 elect coverage for both family leave and medical leave and are
30 responsible for payment of one hundred percent of all premiums
31 assessed to an employee under RCW 50A.04.115 (as recodified by this
32 act). The self-employed person must file a notice of election in
33 writing with the department, in a manner as required by the
34 department in rule. The self-employed person is eligible for family
35 and medical leave benefits after working eight hundred twenty hours
36 in the state during the qualifying period following the date of
37 filing the notice.

38 (2) A self-employed person who has elected coverage may withdraw
39 from coverage within thirty days after the end of each period of

1 coverage, or at such other times as the commissioner may adopt by
2 rule, by filing a notice of withdrawal in writing with the
3 commissioner, such withdrawal to take effect not sooner than thirty
4 days after filing the notice with the commissioner.

5 (3) The department may cancel elective coverage if the self-
6 employed person fails to make required payments or file reports. The
7 department may collect due and unpaid premiums and may levy an
8 additional premium for the remainder of the period of coverage. The
9 cancellation shall be effective no later than thirty days from the
10 date of the notice in writing advising the self-employed person of
11 the cancellation.

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

14 (5) For the purposes of this section, "independent contractor"
15 means an individual excluded from employment under RCW
16 50A.04.010(7)(b)(ii) and (iii) (as recodified by this act).

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

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

25 **Sec. 20.** RCW 50A.04.110 and 2018 c 141 s 2 are each amended to
26 read as follows:

27 A federally recognized tribe may elect coverage under RCW
28 50A.04.105 (as recodified by this act). The department shall adopt
29 rules to implement this section.

30 **Sec. 21.** RCW 50A.04.115 and 2017 3rd sp.s. c 5 s 8 are each
31 amended to read as follows:

32 (1)(a) Beginning January 1, 2019, the department shall assess for
33 each individual in employment with an employer and for each
34 individual electing coverage a premium based on the amount of the
35 individual's wages subject to subsection (4) of this section.

36 (b) The premium rate for family leave benefits shall be equal to
37 one-third of the total premium rate.

1 (c) The premium rate for medical leave benefits shall be equal to
2 two-thirds of the total premium rate.

3 (2) For calendar year 2022 and thereafter, the commissioner shall
4 determine the percentage of paid claims related to family leave
5 benefits and the percentage of paid claims related to medical leave
6 benefits and adjust the premium rates set in subsection (1)(b) and
7 (c) of this section by the proportional share of paid claims.

8 (3)(a) Beginning January 1, 2019, and ending December 31, 2020,
9 the total premium rate shall be four-tenths of one percent of the
10 individual's wages subject to subsection (4) of this section.

11 (b) For family leave premiums, an employer may deduct from the
12 wages of each employee up to the full amount of the premium required.

13 (c) For medical leave premiums, an employer may deduct from the
14 wages of each employee up to forty-five percent of the full amount of
15 the premium required.

16 (d) An employer may elect to pay all or any portion of the
17 employee's share of the premium for family leave or medical leave
18 benefits, or both.

19 (4) The commissioner must annually set a maximum limit on the
20 amount of wages that is subject to a premium assessment under this
21 section that is equal to the maximum wages subject to taxation for
22 social security as determined by the social security administration.

23 (5)(a) Employers with fewer than fifty employees employed in the
24 state are not required to pay the employer portion of premiums for
25 family and medical leave.

26 (b) If an employer with fewer than fifty employees elects to pay
27 the premiums, the employer is then eligible for assistance under RCW
28 50A.04.230 (as recodified by this act).

29 (6) For calendar year 2021 and thereafter, the total premium rate
30 shall be based on the family and medical leave insurance account
31 balance ratio as of September 30th of the previous year. The
32 commissioner shall calculate the account balance ratio by dividing
33 the balance of the family and medical leave insurance account by
34 total covered wages paid by employers and those electing coverage.
35 The division shall be carried to the fourth decimal place with the
36 remaining fraction disregarded unless it amounts to five hundred-
37 thousandths or more, in which case the fourth decimal place shall be
38 rounded to the next higher digit. If the account balance ratio is:

39 (a) Zero to nine hundredths of one percent, the premium is six
40 tenths of one percent of the individual's wages;

1 (b) One tenth of one percent to nineteen hundredths of one
2 percent, the premium is five tenths of one percent of the
3 individual's wages;

4 (c) Two tenths of one percent to twenty-nine hundredths of one
5 percent, the premium is four tenths of one percent of the
6 individual's wages;

7 (d) Three tenths of one percent to thirty-nine hundredths of one
8 percent, the premium is three tenths of one percent of the
9 individual's wages;

10 (e) Four tenths of one percent to forty-nine hundredths of one
11 percent, the premium is two tenths of one percent of the individual's
12 wages; or

13 (f) Five tenths of one percent or greater, the premium is one
14 tenth of one percent of the individual's wages.

15 (7) Beginning January 1, 2021, if the account balance ratio
16 calculated in subsection (6) of this section is below five hundredths
17 of one percent, the commissioner must assess a solvency surcharge at
18 the lowest rate necessary to provide revenue to pay for the
19 administrative and benefit costs of family and medical leave, for the
20 calendar year, as determined by the commissioner. The solvency
21 surcharge shall be at least one-tenth of one percent and no more than
22 six-tenths of one percent and be added to the total premium rate for
23 family and medical leave benefits.

24 (8) (a) The employer must collect from the employees the premiums
25 and any surcharges provided under this section through payroll
26 deductions and remit the amounts collected to the department.

27 (b) In collecting employee premiums through payroll deductions,
28 the employer shall act as the agent of the employees and shall remit
29 the amounts to the department as required by this (~~chapter~~) title.

30 (c) On September 30th of each year, the department shall average
31 the number of employees reported by an employer over the last four
32 completed calendar quarters to determine the size of the employer for
33 the next calendar year for the purposes of this section and RCW
34 50A.04.230 (as recodified by this act).

35 (9) Premiums shall be collected in the manner and at such
36 intervals as provided in this (~~chapter~~) title and directed by the
37 department.

38 (10) Premiums collected under this section are placed in trust
39 for the employees and employers that the program is intended to
40 assist.

1 (11) A city, code city, town, county, or political subdivision
2 may not enact a charter, ordinance, regulation, rule, or resolution:

3 (a) Creating a paid family or medical leave insurance program
4 that alters or amends the requirements of this (~~chapter~~) title for
5 any private employer;

6 (b) Providing for local enforcement of the provisions of this
7 (~~chapter~~) title; or

8 (c) Requiring private employers to supplement duration of leave
9 or amount of wage replacement benefits provided under this
10 (~~chapter~~) title.

11 **Sec. 22.** RCW 50A.04.120 and 2017 3rd sp.s. c 5 s 9 are each
12 amended to read as follows:

13 (1) An employer may file an application with the department for a
14 conditional waiver for the payment of family and medical leave
15 premiums, assessed under RCW 50A.04.115 (as recodified by this act),
16 for any employee who is:

17 (a) Physically based outside of the state;

18 (b) Employed in the state on a limited or temporary work
19 schedule; and

20 (c) Not expected to be employed in the state for eight hundred
21 twenty hours or more in a qualifying period.

22 (2) The department must approve an application that has been
23 signed by both the employee and employer verifying their belief that
24 the conditions in this subsection will be met during the qualifying
25 period.

26 (3) If the employee exceeds the eight hundred twenty hours or
27 more in a (~~qualifying~~) period of four consecutive complete calendar
28 quarters, the conditional waiver expires and the employer and
29 employee will be responsible for their shares of all premiums that
30 would have been paid during (~~the qualifying~~) this period (~~in which~~
31 ~~the employee exceeded the eight hundred twenty hours~~) had the waiver
32 not been granted. Upon payment of the missed premiums, the employee
33 will be credited for the hours worked and will be eligible for
34 benefits under this (~~chapter~~) title as if the premiums were
35 originally paid.

36 **Sec. 23.** RCW 50A.04.125 and 2017 3rd sp.s. c 5 s 67 are each
37 amended to read as follows:

1 Whenever any employer quits business, or sells out, exchanges, or
2 otherwise disposes of the employer's business or stock of goods, any
3 premiums payable under this (~~chapter~~) title shall become
4 immediately due and payable, and the employer shall, within ten days,
5 make a return and pay the premiums due; and any person who becomes a
6 successor to such business shall become liable for the full amount of
7 the premiums and withhold from the purchase price a sum sufficient to
8 pay any premiums due from the employer until such time as the
9 employer produces a receipt from the employment security department
10 showing payment in full of any premiums due or a certificate that no
11 premium is due and, if such premium is not paid by the employer
12 within ten days from the date of such sale, exchange, or disposal,
13 the successor shall become liable for the payment of the full amount
14 of premiums, and the payment thereof by such successor shall, to the
15 extent thereof, be deemed a payment upon the purchase price, and if
16 such payment is greater in amount than the purchase price the amount
17 of the difference shall become a debt due such successor from the
18 employer. A successor may not be liable for any premiums due from the
19 person from whom that person has acquired a business or stock of
20 goods if that person gives written notice to the employment security
21 department of such acquisition and no assessment is issued by the
22 department within one hundred eighty days of receipt of such notice
23 against the former operator of the business and a copy thereof mailed
24 to such successor.

25 **Sec. 24.** RCW 50A.04.145 and 2017 3rd sp.s. c 5 s 60 are each
26 amended to read as follows:

27 If the amount of premiums, interest, or penalties assessed by the
28 commissioner by order and notice of assessment provided in this
29 (~~chapter~~) title is not paid within ten days after the service or
30 mailing of the order and notice of assessment, the commissioner or
31 his or her duly authorized representative may collect the amount
32 stated in said assessment by the distraint, seizure, and sale of the
33 property, goods, chattels, and effects of said delinquent employer.
34 There shall be exempt from distraint and sale under this section such
35 goods and property as are exempt from execution under the laws of
36 this state.

37 **Sec. 25.** RCW 50A.04.160 and 2017 3rd sp.s. c 5 s 63 are each
38 amended to read as follows:

1 Whenever any order and notice of assessment or jeopardy
2 assessment has become final in accordance with the provisions of this
3 (~~chapter~~) title the commissioner may file with the clerk of any
4 county within the state a warrant in the amount of the notice of
5 assessment plus interest, penalties, and a filing fee under RCW
6 36.18.012(10). The clerk of the county wherein the warrant is filed
7 shall immediately designate a superior court cause number for such
8 warrant, and the clerk shall cause to be entered in the judgment
9 docket under the superior court cause number assigned to the warrant,
10 the name of the employer mentioned in the warrant, the amount of the
11 tax, interest, penalties, and filing fee and the date when such
12 warrant was filed. The aggregate amount of such warrant as docketed
13 shall become a lien upon the title to, and interest in all real and
14 personal property of the employer against whom the warrant is issued,
15 the same as a judgment in a civil case duly docketed in the office of
16 such clerk. Such warrant so docketed shall be sufficient to support
17 the issuance of writs of execution and writs of garnishment in favor
18 of the state in the manner provided by law in the case of civil
19 judgment, wholly or partially unsatisfied. The clerk of the court
20 shall be entitled to a filing fee under RCW 36.18.012(10), which
21 shall be added to the amount of the warrant, and charged by the
22 commissioner to the employer or employing unit. A copy of the warrant
23 shall be mailed to the employer or employing unit using a method by
24 which the mailing can be tracked or the delivery can be confirmed
25 within five days of filing with the clerk.

26 **Sec. 26.** RCW 50A.04.165 and 2017 3rd sp.s. c 5 s 56 are each
27 amended to read as follows:

28 The claim of the employment security department for any premiums,
29 interest, or penalties not paid when due, shall be a lien prior to
30 all other liens or claims and on a parity with prior tax liens
31 against all property and rights to property, whether real or
32 personal, belonging to the employer. In order to avail itself of the
33 lien hereby created, the department shall file with any county
34 auditor where property of the employer is located a statement and
35 claim of lien specifying the amount of delinquent premiums, interest,
36 and penalties claimed by the department. From the time of filing for
37 record, the amount required to be paid shall constitute a lien upon
38 all property and rights to property, whether real or personal, in the
39 county, owned by the employer or acquired by him or her. The lien

1 shall not be valid against any purchaser, holder of a security
2 interest, mechanic's lien, or judgment lien creditor until notice
3 thereof has been filed with the county auditor. This lien shall be
4 separate and apart from, and in addition to, any other lien or claim
5 created by, or provided for in, this (~~chapter~~) title. When any such
6 notice of lien has been so filed, the commissioner may release the
7 same by filing a certificate of release when it shall appear that the
8 amount of delinquent premiums, interest, and penalties have been
9 paid, or when such assurance of payment shall be made as the
10 commissioner may deem to be adequate. Fees for filing and releasing
11 the lien provided herein may be charged to the employer and may be
12 collected from the employer utilizing the remedies provided in this
13 (~~chapter~~) title for the collection of premiums.

14 **Sec. 27.** RCW 50A.04.170 and 2017 3rd sp.s. c 5 s 57 are each
15 amended to read as follows:

16 In the event of any distribution of an employer's assets pursuant
17 to an order of any court, including any receivership, probate, legal
18 dissolution, or similar proceeding, or in case of any assignment for
19 the benefit of creditors, composition, or similar proceeding,
20 premiums, interest, or penalties then or thereafter due shall be a
21 lien upon all the assets of such employer. Said lien is prior to all
22 other liens or claims except prior tax liens, other liens provided by
23 this (~~chapter~~) title, and claims for remuneration for services of
24 not more than two hundred fifty dollars to each claimant earned
25 within six months of the commencement of the proceeding. The mere
26 existence of a condition of insolvency or the institution of any
27 judicial proceeding for legal dissolution or of any proceeding for
28 distribution of assets shall cause such a lien to attach without
29 action on behalf of the commissioner or the state. In the event of an
30 employer's adjudication in bankruptcy, judicially confirmed extension
31 proposal, or composition, under the federal bankruptcy act of 1898,
32 as amended, premiums, interest, or penalties then or thereafter due
33 shall be entitled to such priority as provided in that act, as
34 amended.

35 **Sec. 28.** RCW 50A.04.175 and 2017 3rd sp.s. c 5 s 64 are each
36 amended to read as follows:

37 (1) If after due notice, any employer defaults in any payment of
38 premiums, interest, or penalties, the amount due may be collected by

1 civil action in the name of the state, and the employer adjudged in
2 default shall pay the cost of such action. Any lien created by this
3 (~~chapter~~) title may be foreclosed by decree of the court in any
4 such action. Civil actions brought under this (~~chapter~~) title to
5 collect premiums, interest, or penalties from an employer shall be
6 heard by the court at the earliest possible date and shall be
7 entitled to preference upon the calendar of the court over all other
8 civil actions except petitions for judicial review under this
9 (~~chapter~~) title, cases arising under the unemployment compensation
10 laws of this state, and cases arising under the industrial insurance
11 laws of this state.

12 (2) Any employing unit that is not a resident of this state and
13 that exercises the privilege of having one or more individuals
14 perform service for it within this state, and any resident employing
15 unit that exercises that privilege and thereafter removes from this
16 state, shall be deemed thereby to appoint the secretary of state as
17 its agent and attorney for the acceptance of process in any action
18 under this (~~chapter~~) title. In instituting such an action against
19 any such employing unit the commissioner shall cause such process or
20 notice to be filed with the secretary of state and such service shall
21 be sufficient service upon such employing unit, and shall be of the
22 same force and validity as if served upon it personally within this
23 state: PROVIDED, That the commissioner shall forthwith send notice of
24 the service of such process or notice, together with a copy thereof,
25 by registered mail, return receipt requested, to such employing unit
26 at its last known address and such return receipt, the commissioner's
27 affidavit of compliance with the provisions of this section, and a
28 copy of the notice of service shall be appended to the original of
29 the process filed in the court in which such action is pending.

30 **Sec. 29.** RCW 50A.04.185 and 2017 3rd sp.s. c 5 s 54 are each
31 amended to read as follows:

32 The commissioner may compromise any claim for premiums, interest,
33 or penalties due and owing from an employer, and any amount owed by
34 an individual because of benefit overpayments existing or arising
35 under this (~~chapter~~) title in any case where collection of the full
36 amount due and owing, whether reduced to judgment or otherwise, would
37 be against equity and good conscience. Whenever a compromise is made
38 by the commissioner in the case of a claim for premiums, interest, or
39 penalties, whether reduced to judgment or otherwise, there shall be

1 placed on file in the department a statement of the amount of
2 premiums, interest, and penalties imposed by law and claimed due,
3 attorneys' fees and costs, if any, a complete record of the
4 compromise agreement, and the amount actually paid in accordance with
5 the terms of the compromise agreement. Whenever a compromise is made
6 by the commissioner in the case of a claim of a benefit overpayment,
7 whether reduced to judgment or otherwise, there shall be placed on
8 file in the department a statement of the amount of the benefit
9 overpayment, attorneys' fees and costs, if any, a complete record of
10 the compromise agreement, and the amount actually paid in accordance
11 with the terms of the compromise agreement. If any such compromise is
12 accepted by the commissioner, within such time as may be stated in
13 the compromise or agreed to, such compromise shall be final and
14 conclusive and except upon showing of fraud or malfeasance or
15 misrepresentation of a material fact the case shall not be reopened
16 as to the matters agreed upon. In any suit, action, or proceeding,
17 such agreement or any determination, collection, payment, adjustment,
18 refund, or credit made in accordance therewith shall not be annulled,
19 modified, set aside, or disregarded.

20 **Sec. 30.** RCW 50A.04.195 and 2017 3rd sp.s. c 5 s 29 are each
21 amended to read as follows:

22 (1) The department shall establish and administer the family and
23 medical leave program and pay family and medical leave benefits as
24 specified in this (~~chapter~~) title. The department shall adopt
25 government efficiencies to improve administration and reduce costs.
26 These efficiencies shall include, to the extent feasible, combined
27 reporting and payment, with a single return, of premiums under this
28 (~~chapter~~) title and contributions under chapter 50.24 RCW.

29 (2) The department shall establish procedures and forms for
30 filing applications for benefits under this (~~chapter~~) title. The
31 department shall notify the employer within five business days of an
32 application being filed.

33 (3) The department shall use information sharing and integration
34 technology to facilitate the disclosure of relevant information or
35 records by the department, so long as an employee consents to the
36 disclosure as required under RCW 50A.04.035 (as recodified by this
37 act).

38 (4) Information contained in the files and records pertaining to
39 an employee under this chapter are confidential and not open to

1 public inspection, other than to public employees in the performance
2 of their official duties, except as provided in chapter 50A.--- RCW
3 (the new chapter created in section 84 of this act). ((However, the
4 ~~employee or an authorized representative of an employee may review~~
5 ~~the records or receive specific information from the records on the~~
6 ~~presentation of the signed authorization of the employee. An employer~~
7 ~~or the employer's duly authorized representative may review the~~
8 ~~records of an employee employed by the employer in connection with a~~
9 ~~pending application. At the department's discretion, other persons~~
10 ~~may review records when such persons are rendering assistance to the~~
11 ~~department at any stage of the proceedings on any matter pertaining~~
12 ~~to the administration of this chapter.))~~

13 (5) The department shall develop and implement an outreach
14 program to ensure that employees who may be qualified to receive
15 family and medical leave benefits under this ((chapter)) title are
16 made aware of these benefits. Outreach information shall explain, in
17 an easy to understand format, eligibility requirements, the
18 application process, weekly benefit amounts, maximum benefits
19 payable, notice and certification requirements, reinstatement and
20 nondiscrimination rights, confidentiality, voluntary plans, and the
21 relationship between employment protection, leave from employment,
22 and wage replacement benefits under this ((chapter)) title and other
23 laws, collective bargaining agreements, and employer policies.
24 Outreach information shall be available in English and other primary
25 languages as defined in RCW 74.04.025.

26 (6) The department is authorized to inspect and audit employer
27 files and records relating to the family and medical leave program,
28 including employer voluntary plans.

29 **Sec. 31.** RCW 50A.04.200 and 2017 3rd sp.s. c 5 s 28 are each
30 amended to read as follows:

31 (1) The commissioner shall appoint an advisory committee to
32 review issues and topics of interest related to this ((chapter))
33 title.

34 (2) The committee is composed of ten members: (a) Four members
35 representing employees' interests in paid family and medical leave,
36 each of whom shall be appointed from a list of at least four names
37 submitted by a recognized statewide organization of employees; (b)
38 four members representing employers, each of whom shall be appointed
39 from a list of at least four names submitted by a recognized

1 statewide organization of employers; and (c) two ex officio members,
2 without a vote, one of whom shall represent the department and the
3 other shall be the ombuds for the family and medical leave program.
4 The member representing the department shall be the chair.

5 (3) The committee shall provide comment on department rule
6 making, policies, implementation of this (~~chapter~~) title,
7 utilization of benefits, and other initiatives, and study issues the
8 committee determines to require its consideration.

9 (4) The members shall serve without compensation, but are
10 entitled to reimbursement for travel expenses as provided in RCW
11 43.03.050 and 43.03.060. The committee may utilize such personnel and
12 facilities of the department as it needs, without charge. All
13 expenses of the committee must be paid by the family and medical
14 leave insurance account.

15 **Sec. 32.** RCW 50A.04.205 and 2017 3rd sp.s. c 5 s 88 are each
16 amended to read as follows:

17 (1) The commissioner shall establish an ombuds office for family
18 and medical leave within the department. The ombuds shall be
19 appointed by the governor and report directly to the commissioner of
20 the department. The ombuds is available to all employers and
21 employees in the state.

22 (2) The person appointed ombuds shall hold office for a term of
23 six years and shall continue to hold office until reappointed or
24 until his or her successor is appointed. The governor may remove the
25 ombuds only for neglect of duty, misconduct, or inability to perform
26 duties. Any vacancy shall be filled by similar appointment for the
27 remainder of the unexpired term.

28 (3) The ombuds shall:

29 (a) Offer and provide information on family and medical leave to
30 employers and employees;

31 (b) Act as an advocate for employers and employees in their
32 dealings with the department;

33 (c) Identify, investigate, and facilitate resolution of disputes
34 and complaints under this (~~chapter~~) title; and

35 (d) Refer complaints to the department when appropriate.

36 (4) The ombuds may conduct surveys of employees. Survey questions
37 and results are confidential and not subject to public disclosure.

38 (5) The ombuds is not liable for the good faith performance of
39 responsibilities under this (~~chapter~~) title.

1 (6) All of the ombuds' records and files relating to any
2 complaint or investigation made pursuant to carrying out the ombuds'
3 duties and the identities of complainants, witnesses, workers, or
4 employers shall remain confidential unless disclosure is authorized
5 by the complainant worker or his or her guardian or legal
6 representative or the employer or the employer's legal
7 representative. No disclosures may be made outside the office of the
8 ombuds without the consent of the named witnesses or complainants
9 unless the disclosure is made without the identity of any of the
10 individuals being disclosed.

11 **Sec. 33.** RCW 50A.04.215 and 2017 3rd sp.s. c 5 s 85 are each
12 amended to read as follows:

13 The commissioner shall adopt rules as necessary to implement this
14 (~~chapter~~) title.

15 **Sec. 34.** RCW 50A.04.220 and 2017 3rd sp.s. c 5 s 82 are each
16 amended to read as follows:

17 (1) The family and medical leave insurance account is created in
18 the custody of the state treasurer. All receipts from premiums
19 imposed under this (~~chapter~~) title must be deposited in the
20 account. Expenditures from the account may be used only for the
21 purposes of the family and medical leave program. Only the
22 commissioner or the commissioner's designee may authorize
23 expenditures from the account. The account is subject to the
24 allotment procedures under chapter 43.88 RCW. An appropriation is
25 required for administrative expenses, but not for benefit payments.

26 (2) Money deposited in the account shall remain a part of the
27 account until expended pursuant to the requirements of this
28 (~~chapter~~) title or transferred in accordance with subsection (3) of
29 this section. The commissioner shall maintain a separate record of
30 the deposit, obligation, expenditure, and return of funds so
31 deposited. Any money so deposited which either will not be obligated
32 within the period specified by the appropriations act or remains
33 unobligated at the end of the period, and any money which has been
34 obligated within the period but will not be expended, shall be
35 returned promptly to the family and medical leave insurance account.

36 (3) Money shall be transferred from the family and medical leave
37 insurance account and deposited in the unemployment trust fund solely
38 for the repayment of benefits not charged to employers as defined in

1 RCW 50.29.021(4) (a) (vii). The commissioner shall direct the transfer,
2 which must occur on or before the cut-off date as defined in RCW
3 50.29.010.

4 (4) Money transferred as provided in subsection (3) of this
5 section for the repayment of benefits not charged to employers shall
6 be deposited in the unemployment compensation fund and shall remain a
7 part of the unemployment compensation fund until expended pursuant to
8 RCW 50.16.030. The commissioner shall maintain a separate record of
9 the deposit, obligation, expenditure, and return of funds so
10 deposited. Any money so deposited which either will not be obligated
11 within the period specified by the appropriation law or remains
12 unobligated at the end of the period, and any money which has been
13 obligated within the period but will not be expended, shall be
14 returned promptly to the account of this state in the unemployment
15 trust fund.

16 **Sec. 35.** RCW 50A.04.225 and 2017 3rd sp.s. c 5 s 76 are each
17 amended to read as follows:

18 The family and medical leave enforcement account is created in
19 the custody of the state treasurer. Any money in the family leave
20 insurance account created in section 19, chapter 357, Laws of 2007 is
21 transferred to the account created in this section. Any penalties and
22 interest collected under RCW 50A.04.045 (as recodified by this act),
23 50A.04.065 (as recodified by this act), 50A.04.075 (as recodified by
24 this act), 50A.04.080 (as recodified by this act), 50A.04.090 (as
25 recodified by this act), 50A.04.140 (as recodified by this act), and
26 50A.04.655 (as recodified by this act) shall be deposited into the
27 account and shall be used only for the purposes of administering and
28 enforcing this (~~chapter~~) title. Only the commissioner may authorize
29 expenditures from the account. The account is subject to allotment
30 procedures under chapter 43.88 RCW, but an appropriation is not
31 required for expenditures.

32 **Sec. 36.** RCW 50A.04.230 and 2017 3rd sp.s. c 5 s 84 are each
33 amended to read as follows:

34 (1) The legislature recognizes that while family leave and
35 medical leave benefit both employees and employers, there may be
36 costs that disproportionately impact small businesses. To equitably
37 balance the risks among employers, the legislature intends to assist

1 small businesses with the costs of an employee's use of family or
2 medical leave.

3 (2) Employers with one hundred fifty or fewer employees and
4 employers with fifty or fewer employees who are assessed all premiums
5 under RCW 50A.04.115(5)(b) (as recodified by this act) may apply to
6 the department for a grant under this section.

7 (3)(a) An employer may receive a grant of three thousand dollars
8 if the employer hires a temporary worker to replace an employee on
9 family or medical leave for a period of seven days or more.

10 (b) For an employee's family or medical leave, an employer may
11 receive a grant of up to one thousand dollars as reimbursement for
12 significant additional wage-related costs due to the employee's
13 leave.

14 (c) An employer may receive a grant under (a) or (b) of this
15 subsection, but not both, except that an employer who received a
16 grant under (b) of this subsection may receive a grant of the
17 difference between the grant awarded under (b) of this subsection and
18 three thousand dollars if the employee on leave extended the leave
19 beyond the leave initially planned and the employer hired a temporary
20 worker for the employee on leave.

21 (4) An employer may apply for a grant no more than ten times per
22 calendar year and no more than once for each employee on leave.

23 (5) To be eligible for a grant, the employer must provide the
24 department written documentation showing the temporary worker hired
25 or significant wage-related costs incurred are due to an employee's
26 use of family or medical leave.

27 (6) The department must assess an employer with fewer than fifty
28 employees who receives a grant under this section for all premiums
29 for three years from the date of receipt of a grant.

30 (7) The grants under this section shall be funded from the family
31 and medical leave insurance account.

32 (8) The commissioner shall adopt rules as necessary to implement
33 this section.

34 (9) For the purposes of this section, the number of employees
35 must be calculated as provided in RCW 50A.04.115 (as recodified by
36 this act).

37 (10) An employer who has an approved voluntary plan is not
38 eligible to receive a grant under this section.

1 **Sec. 37.** RCW 50A.04.235 and 2017 3rd sp.s. c 5 s 87 are each
2 amended to read as follows:

3 Nothing in this (~~chapter~~) title requires any party to a
4 collective bargaining agreement in existence on October 19, 2017, to
5 reopen negotiations of the agreement or to apply any of the rights
6 and responsibilities under this (~~chapter~~) title unless and until
7 the existing agreement is reopened or renegotiated by the parties or
8 expires.

9 **Sec. 38.** RCW 50A.04.240 and 2017 3rd sp.s. c 5 s 69 are each
10 amended to read as follows:

11 (1) Leave from employment under this (~~chapter~~) title is in
12 addition to leave from employment during which benefits are paid or
13 are payable under Title 51 RCW or other applicable federal or state
14 industrial insurance laws.

15 (2) In any week in which an employee is eligible to receive
16 benefits under Title 50 or 51 RCW, or other applicable federal or
17 state unemployment compensation, industrial insurance, or disability
18 insurance laws, the employee is disqualified from receiving family or
19 medical leave benefits under this (~~chapter~~) title.

20 **Sec. 39.** RCW 50A.04.245 and 2017 3rd sp.s. c 5 s 70 are each
21 amended to read as follows:

22 If required by the federal family and medical leave act, as it
23 existed on October 19, 2017, during any period of family or medical
24 leave taken under this (~~chapter~~) title, the employer shall maintain
25 any existing health benefits of the employee in force for the
26 duration of such leave as if the employee had continued to work from
27 the date the employee commenced family or medical leave until the
28 date the employee returns to employment. If the employer and employee
29 share the cost of the existing health benefits, the employee remains
30 responsible for the employee's share of the cost. This section does
31 not apply to an employee who is not in employment for an employer at
32 the time of filing an application for benefits.

33 **Sec. 40.** RCW 50A.04.250 and 2017 3rd sp.s. c 5 s 79 are each
34 amended to read as follows:

35 (1) Leave under this (~~chapter~~) title and leave under the
36 federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L.
37 103-3, 107 Stat. 6, as it existed on October 19, 2017) is in addition

1 to any leave for sickness or temporary disability because of
2 pregnancy or childbirth.

3 (2) Unless otherwise expressly permitted by the employer, leave
4 taken under this (~~chapter~~) title must be taken concurrently with
5 any leave taken under the federal family and medical leave act of
6 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on
7 October 19, 2017).

8 **Sec. 41.** RCW 50A.04.255 and 2017 3rd sp.s. c 5 s 77 are each
9 amended to read as follows:

10 Nothing in this (~~chapter~~) title shall be construed to modify or
11 affect any state or local law prohibiting discrimination on the basis
12 of race, creed, religion, color, national origin, families with
13 children, sex, marital status, sexual orientation including gender
14 expression or identity, age, honorably discharged veteran or military
15 status, or the presence of any sensory, mental, or physical
16 disability or the use of a trained dog guide or service animal by a
17 person with a disability.

18 **Sec. 42.** RCW 50A.04.260 and 2017 3rd sp.s. c 5 s 78 are each
19 amended to read as follows:

20 (1) Nothing in this (~~chapter~~) title shall be construed to
21 discourage employers from:

22 (a) Adopting or retaining leave policies more generous than any
23 policies that comply with the requirements under this (~~chapter~~)
24 title; or

25 (b) Making (~~payments to supplement the~~) supplemental benefit
26 payments as provided under RCW (~~50A.04.020~~) 50A.04.045 (as
27 recodified by this act) to an employee on paid family or medical
28 leave.

29 (2) Any agreement by an individual to waive, release, or commute
30 his or her rights under this (~~chapter~~) title is void as against
31 public policy.

32 (3) After January 1, 2020, subject to RCW 50A.04.235 (as
33 recodified by this act), an employee's rights under this (~~chapter~~)
34 title may not be diminished by a collective bargaining agreement or
35 employer policy.

36 **Sec. 43.** RCW 50A.04.265 and 2017 3rd sp.s. c 5 s 81 are each
37 amended to read as follows:

1 This (~~chapter~~) title does not create a continuing entitlement
2 or contractual right. The legislature reserves the right to amend or
3 repeal all or part of this (~~chapter~~) title at any time, and a
4 benefit or other right granted under this (~~chapter~~) title exists
5 subject to the legislature's power to amend or repeal this
6 (~~chapter~~) title. There is no vested private right of any kind
7 against such amendment or repeal.

8 **Sec. 44.** RCW 50A.04.505 and 2017 3rd sp.s. c 5 s 36 are each
9 amended to read as follows:

10 (1) When an order and notice of assessment has been served upon
11 or mailed to a delinquent employer, the employer may within thirty
12 days file an appeal with the department, stating that the assessment
13 is unjust or incorrect and requesting a hearing. The appeal must set
14 forth the reasons why the assessment is objected to and the amount of
15 premiums, if any, which the employer admits to be due. If no appeal
16 is filed, the assessment shall be conclusively deemed to be just and
17 correct except that in such case, and in cases where payment of
18 premiums, interest, or penalties has been made pursuant to a jeopardy
19 assessment, the commissioner may properly entertain a subsequent
20 application for refund. The filing of an appeal on a disputed
21 assessment with the administrative law judge stays the distraint and
22 sale proceeding provided for in this (~~chapter~~) title until a final
23 decision has been made, but the filing of an appeal shall not affect
24 the right of the commissioner to perfect a lien, as provided by this
25 (~~chapter~~) title, upon the property of the employer. The filing of a
26 petition on a disputed assessment stays the accrual of interest and
27 penalties on the disputed premiums until a final decision is made.

28 (2) Within thirty days after notice of denial of refund or
29 adjustment has been mailed or delivered, whichever is the earlier, to
30 an employer, the employer may file an appeal with the department for
31 a hearing unless assessments have been appealed from and have become
32 final. The employer shall set forth the reasons why such hearing
33 should be granted and the amount which the employer believes should
34 be adjusted or refunded. If no appeal is filed within said thirty
35 days, the determination of the commissioner as stated in the notice
36 shall be final.

37 **Sec. 45.** RCW 50A.04.510 and 2017 3rd sp.s. c 5 s 53 are each
38 amended to read as follows:

1 (1) A determination of amount of benefits potentially payable
2 under this ((chapter)) title is not a basis for appeal. However, the
3 determination is subject to request by the employee on family and
4 medical leave for redetermination by the commissioner at any time
5 within one year from the date of delivery or mailing of such
6 determination, or any redetermination thereof. A redetermination
7 shall be furnished to the employee in writing and provide the basis
8 for appeal.

9 (2) A determination of denial of benefits becomes final, in the
10 absence of timely appeal therefrom. The commissioner may redetermine
11 such determinations at any time within one year from delivery or
12 mailing to correct an error in identity, omission of fact, or
13 misapplication of law with respect to the facts.

14 (3) A determination of allowance of benefits becomes final, in
15 the absence of a timely appeal therefrom. The commissioner may
16 redetermine such allowance at any time within two years following the
17 eligibility period in which such allowance was made in order to
18 recover any benefits for which recovery is provided under this
19 ((chapter)) title.

20 (4) A redetermination may be made at any time: (a) To conform to
21 a final court decision applicable to either an initial determination
22 or a determination of denial or allowance of benefits; (b) in the
23 event of a back pay award or settlement affecting the allowance of
24 benefits; or (c) in the case of misrepresentation or willful failure
25 to report a material fact. Written notice of any such redetermination
26 shall be promptly given by mail or delivered to such interested
27 parties as were notified of the initial determination or
28 determination of denial or allowance of benefits and any new
29 interested party or parties who, pursuant to such rule as the
30 commissioner may adopt, would be an interested party.

31 **Sec. 46.** RCW 50A.04.520 and 2017 3rd sp.s. c 5 s 38 are each
32 amended to read as follows:

33 In any proceeding before an administrative law judge involving an
34 appeal from a disputed order and notice of assessment or a disputed
35 denial of refund or adjustment, the administrative law judge, after
36 affording the parties a reasonable opportunity for hearing, shall
37 affirm, modify, or set aside the notice of assessment or denial of
38 refund. The parties shall be duly notified of such decision together
39 with the reasons, which shall be deemed to be the final decision

1 unless within thirty days after the date of notification or mailing,
2 whichever is the earlier, of such decision, further appeal is
3 perfected pursuant to the provisions of this (~~chapter~~) title
4 relating to review by the commissioner.

5 **Sec. 47.** RCW 50A.04.525 and 2018 c 141 s 4 are each amended to
6 read as follows:

7 (1) In any proceeding before an administrative law judge
8 involving a dispute of an employee's initial determination, claim for
9 waiting period credit or claim for benefits, all matters and
10 provisions of this (~~chapter~~) title relating to the employee's
11 initial determination, or right to receive such credit or benefits
12 for the period in question, shall be deemed to be in issue
13 irrespective of the particular ground or grounds set forth in the
14 notice of appeal in single employee cases.

15 (2) In any proceeding before an administrative law judge
16 involving an employee's right to benefits, all parties shall be
17 afforded an opportunity for hearing after not less than seven days'
18 notice in accordance with RCW 34.05.434.

19 (3) In any proceeding involving an appeal relating to benefit
20 determinations or benefit claims, the administrative law judge, after
21 affording the parties reasonable opportunity for fair hearing, shall
22 render its decision affirming, modifying, or setting aside the
23 determination or decisions of the department. The parties shall be
24 duly notified of such decision together with the reasons, which shall
25 be deemed to be the final decision unless, within thirty days after
26 the date of notification or mailing, whichever is the earlier, of
27 such decision, further appeal is perfected pursuant to RCW 50A.04.535
28 (as recodified by this act).

29 **Sec. 48.** RCW 50A.04.540 and 2018 c 141 s 5 are each amended to
30 read as follows:

31 After having acquired jurisdiction for review, the commissioner
32 shall review the proceedings in question. Prior to rendering a
33 decision, the commissioner may order the taking of additional
34 evidence by an administrative law judge to be made a part of the
35 record in the case. Upon the basis of evidence submitted to the
36 administrative law judge and such additional evidence as the
37 commissioner may order to be taken, the commissioner shall render a
38 decision in writing affirming, modifying, or setting aside the

1 decision of the administrative law judge. Alternatively, the
2 commissioner may order further proceedings to be held before the
3 administrative law judge, upon completion of which the administrative
4 law judge shall issue a new decision in writing affirming, modifying,
5 or setting aside the previous decision of the administrative law
6 judge. The new decision of the administrative law judge may be
7 appealed as provided under RCW 50A.04.535 (as recodified by this
8 act). The commissioner shall mail the decision of the commissioner to
9 the interested parties at their last known addresses.

10 **Sec. 49.** RCW 50A.04.550 and 2017 3rd sp.s. c 5 s 48 are each
11 amended to read as follows:

12 Any finding, determination, conclusion, declaration, or final
13 order made by the commissioner, or his or her representative or
14 delegate, or by an appeal tribunal, administrative law judge,
15 reviewing officer, or other agent of the department for the purposes
16 of this (~~chapter~~) title, shall not be conclusive, nor binding, nor
17 admissible as evidence in any separate action outside the scope of
18 this (~~chapter~~) title between an employee and the employee's present
19 or prior employer before an arbitrator, court, or judge of this state
20 or the United States, regardless of whether the prior action was
21 between the same or related parties or involved the same facts or was
22 reviewed pursuant to RCW 50A.04.565 (as recodified by this act).

23 **Sec. 50.** RCW 50A.04.555 and 2017 3rd sp.s. c 5 s 41 are each
24 amended to read as follows:

25 For good cause shown the administrative law judge or the
26 commissioner may waive the time limitations for administrative
27 appeals or petitions set forth in this (~~chapter~~) title.

28 **Sec. 51.** RCW 50A.04.560 and 2017 3rd sp.s. c 5 s 47 are each
29 amended to read as follows:

30 (1) In all court proceedings under or pursuant to this
31 (~~chapter~~) title the decision of the commissioner shall be prima
32 facie correct, and the burden of proof shall be upon the party
33 attacking the decision.

34 (2) If the court determines that the commissioner has acted
35 within the commissioner's power and has correctly construed the law,
36 the decision of the commissioner shall be confirmed; otherwise, the
37 decision shall be reversed or modified. In case of a modification or

1 reversal the superior court shall refer the decision to the
2 commissioner with an order directing the commissioner to proceed in
3 accordance with the findings of the court.

4 (3) Whenever any order and notice of assessment shall have become
5 final in accordance with the provisions of this (~~chapter~~) title,
6 the court shall upon application of the commissioner enter a judgment
7 in the amount provided for in the order and notice of assessment, and
8 the judgment shall have and be given the same effect as if entered
9 pursuant to a civil action instituted in the court.

10 **Sec. 52.** RCW 50A.04.565 and 2018 c 141 s 6 are each amended to
11 read as follows:

12 Judicial review of a decision of the commissioner involving the
13 review of a decision of an administrative law judge under this
14 (~~chapter~~) title may be had only in accordance with the procedural
15 requirements of RCW 34.05.452.

16 **Sec. 53.** RCW 50A.04.580 and 2017 3rd sp.s. c 5 s 49 are each
17 amended to read as follows:

18 An individual shall not be charged fees of any kind in any
19 proceeding involving the employee's application for initial
20 determination, or claim for waiting period credit, or claim for
21 benefits, under this (~~chapter~~) title by the commissioner or his or
22 her representatives, or by an appeal tribunal, or any court, or any
23 officer thereof. Any employee in any such proceeding before the
24 commissioner or any appeal tribunal may be represented by counsel or
25 other duly authorized agent who shall neither charge nor receive a
26 fee for such services in excess of an amount found reasonable by the
27 officer conducting such proceeding.

28 **Sec. 54.** RCW 50A.04.590 and 2017 3rd sp.s. c 5 s 52 are each
29 amended to read as follows:

30 (1) Whenever any appeal is taken from any decision of the
31 commissioner to any court, all expenses and costs incurred by the
32 commissioner, including court reporter costs and attorneys' fees and
33 all costs taxed against such commissioner, shall be paid out of the
34 family and medical leave enforcement account.

35 (2) Neither the commissioner nor the state shall be charged any
36 fee for any service rendered in connection with litigation under this
37 (~~chapter~~) title by the clerk of any court.

1 **Sec. 55.** RCW 50A.04.595 and 2017 3rd sp.s. c 5 s 51 are each
2 amended to read as follows:

3 The remedies provided in this (~~chapter~~) title for determining
4 the justness or correctness of assessments, refunds, adjustments, or
5 claims shall be exclusive and no court shall entertain any action to
6 enjoin an assessment or require a refund or adjustment except in
7 accordance with the provisions of this (~~chapter~~) title. Matters
8 which may be determined by the procedures set out in this (~~chapter~~)
9 title shall not be the subject of any declaratory judgment.

10 **Sec. 56.** RCW 50A.04.600 and 2018 c 141 s 7 are each amended to
11 read as follows:

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

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

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

23 (4) (~~Except as provided in this section, an employee covered by~~
24 ~~an approved voluntary plan at the commencement of a period of family~~
25 ~~leave or a medical leave benefit period is not entitled to benefits~~
26 ~~from the state program. Benefits payable to that employee is the~~
27 ~~liability of the approved voluntary plan under which the employee was~~
28 ~~covered at the commencement of the family leave or medical leave~~
29 ~~benefit period, regardless of any subsequent serious health condition~~
30 ~~or family leave which may occur during the benefit period.)) An
31 employee may only receive payment of benefits for family leave,
32 medical leave, or both from one approved plan at a time. An employee
33 who qualifies for benefits and is simultaneously covered by more than
34 one plan under this title will receive benefits under the plan for
35 which the employee has worked the most hours during the employee's
36 qualifying period. The commissioner must adopt rules to allow
37 benefits or prevent duplication of benefits to employees
38 simultaneously covered by one or more approved voluntary plans and
39 the state program.~~

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

4 (a) The benefits afforded to the employees must be at least
5 equivalent to the benefits the employees are entitled to as part of
6 the state's family and medical leave program, including but not
7 limited to the duration of leave. The employer must offer at least
8 one-half of the length of leave as provided in RCW 50A.04.020(3) (as
9 recodified by this act) with pay and provide a monetary payment in an
10 amount equal to or higher than the total amount of monetary benefits
11 the employee would be entitled to receive as part of the state-run
12 program. The employer may offer the same duration of leave and
13 monetary benefits as offered under the state program.

14 (b) The sick leave an employee is entitled to under RCW 49.46.210
15 is in addition to the employer's provided benefits and is in addition
16 to any family and medical leave benefits.

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

19 (d) The employer has agreed to make the payroll deductions
20 required, if any, and transmit the proceeds to the department for any
21 portions not collected for the voluntary plan.

22 (e) The plan will be in effect for a period of not less than one
23 year and, thereafter, continuously unless the commissioner finds that
24 the employer has given notice of withdrawal from the plan in a manner
25 specified by the commissioner in rule. The plan may be withdrawn by
26 the employer on the date of any law increasing the benefit amounts or
27 the date of any change in the rate of employee premiums, if notice of
28 the withdrawal from the plan is transmitted to the commissioner not
29 less than thirty days prior to the date of that law or change. If the
30 plan is not withdrawn, it must be amended to conform to provide the
31 increased benefit amount or change in the rate of the employee's
32 premium on the date of the increase or change.

33 (f) The amount of payroll deductions from the wages of an
34 employee in effect for any voluntary plan may not exceed the maximum
35 payroll deduction for that employee as authorized under RCW
36 50A.04.115 (as recodified by this act). The deductions may not be
37 increased on other than an anniversary of the effective date of the
38 plan, except to the extent that any increase in the deductions from
39 the wages of an employee do not exceed the maximum rate authorized
40 under the state program.

1 (g) The voluntary plan provides that an employee of an employer
2 with a voluntary plan for either family leave or medical leave, or
3 both, is eligible for the plan benefits if the employee meets the
4 requirements of RCW 50A.04.015 (as recodified by this act) and has
5 worked at least three hundred forty hours for the employer during the
6 twelve months immediately preceding the date leave will commence.

7 (h) The voluntary plan provides that an employee of an employer
8 with a voluntary plan for either family leave or medical leave, or
9 both, who takes leave under the voluntary plan is entitled to the
10 employment protection provisions contained in RCW 50A.04.025 (as
11 recodified by this act) if the employee has worked for the employer
12 for at least nine months and nine hundred sixty-five hours during the
13 twelve months immediately preceding the date leave will commence.

14 (i) The voluntary plan provides that the employer maintains the
15 employee's existing health benefits as provided under RCW 50A.04.245
16 (as recodified by this act).

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

21 (b) The review must include an analysis of the adequacy of the
22 fee in subsection (1) of this section to cover the department's
23 administrative expenses related to reviewing and approving or denying
24 the applications and administering appeals related to voluntary
25 plans. The review must include an estimate of the next year's
26 projected administrative costs related to the voluntary plans. The
27 legislature shall adjust the fee in subsection (1) of this section as
28 needed to ensure the department's administrative expenses related to
29 the voluntary plans are covered by the fee.

30 (c) If the current receipts from the fee in subsection (1) of
31 this section are inadequate to cover the department's administrative
32 expenses related to the voluntary plans, the department may use funds
33 from the family and medical leave insurance account under RCW
34 50A.04.220 (as recodified by this act) to pay for these expenses.

35 **Sec. 57.** RCW 50A.04.610 and 2017 3rd sp.s. c 5 s 22 are each
36 amended to read as follows:

37 (1) To be eligible for any family and medical leave, an employee
38 must be in employment for eight hundred twenty hours during the
39 qualifying period, by an employer with a voluntary plan or an

1 employer utilizing the state family and medical leave plan. An
2 employee qualifies for benefits under an employer's voluntary plan
3 (~~only~~) after the employee works at least three hundred forty hours
4 for the current employer.

5 (2) An employer with an approved voluntary plan may waive the
6 requirements in subsection (1) of this section, in whole or in part,
7 to allow an employee to be immediately eligible for coverage under
8 the employer's voluntary plan.

9 (3) An employee who had coverage under the state plan retains
10 coverage under the state plan until such time as the employee is
11 qualified for coverage under the new employer's voluntary plan.

12 (~~(+3)~~) (4) An employee who was eligible for benefits under a
13 voluntary plan is immediately eligible for benefits under a new
14 employer's voluntary plan.

15 **Sec. 58.** RCW 50A.04.615 and 2017 3rd sp.s. c 5 s 23 are each
16 amended to read as follows:

17 (1) An employee is no longer covered by an approved voluntary
18 plan if family leave or the employee's medical leave occurred after
19 the employment relationship with the voluntary plan employer ends, or
20 if the commissioner terminates a voluntary plan.

21 (2) An employee who has ceased to be covered by an approved
22 voluntary plan is, if otherwise eligible, immediately entitled to
23 benefits from the state program to the same extent as though there
24 had been no exemption as provided in this (~~chapter~~) title.

25 **Sec. 59.** RCW 50A.04.625 and 2017 3rd sp.s. c 5 s 17 are each
26 amended to read as follows:

27 An employer may assume all or a greater part of the cost of the
28 voluntary plan than required under the state program. An employer may
29 deduct from the wages of an employee covered by the voluntary plan,
30 for the purpose of providing the benefits specified in this
31 (~~chapter~~) title, an amount not in excess of that which would be
32 required if the employee was not covered by the plan.

33 **Sec. 60.** RCW 50A.04.645 and 2017 3rd sp.s. c 5 s 27 are each
34 amended to read as follows:

35 (1) The commissioner must approve any amendment to a voluntary
36 plan adjusting the provisions thereof, as to periods after the
37 effective date of the amendment, when the commissioner finds: (a)

1 That the plan, as amended, will conform to the standards set forth in
2 this (~~chapter~~) title; and (b) that notice of the amendment has been
3 delivered to the employees at least ten days prior to the approval.

4 (2) Nothing contained in this section is intended to deny or
5 limit the right of the commissioner to adopt supplementary rules
6 regarding voluntary plans.

7 **Sec. 61.** RCW 50A.04.650 and 2017 3rd sp.s. c 5 s 21 are each
8 amended to read as follows:

9 (1) The commissioner may terminate any voluntary plan if the
10 commissioner finds that there is risk that the benefits accrued or
11 that will accrue will not be paid or for other good cause shown.

12 (2) The commissioner must give notice of the commissioner's
13 intention to terminate a plan to the employer at least ten days
14 before taking any final action. The notice must state the effective
15 date and the reason for the termination.

16 (3) On the effective date of the termination of a plan by the
17 commissioner, all moneys in the plan, including moneys paid by the
18 employer, moneys paid by the employees, moneys owed to the voluntary
19 plan by the employer but not yet paid to the plan, and any interest
20 accrued on all these moneys, must be remitted to the department and
21 deposited into the family and medical leave insurance account.

22 (4) The employer may, within ten days from mailing or personal
23 service of the notice, file an appeal in the time, manner, method,
24 and procedure provided in RCW 50A.04.500 (as recodified by this act).

25 (5) The payment of benefits and the transfer of moneys in the
26 voluntary plan may not be delayed during an employer's appeal of the
27 termination of a voluntary plan.

28 (6) If an employer's voluntary plan has been terminated by the
29 commissioner the employer is not eligible to apply for approval of
30 another voluntary plan for a period of three years.

31 **Sec. 62.** RCW 50A.04.655 and 2017 3rd sp.s. c 5 s 20 are each
32 amended to read as follows:

33 (1) An employer of a voluntary plan found to have violated this
34 (~~chapter~~) title shall be assessed the following monetary penalties:

35 (a) One thousand dollars for the first violation; and

36 (b) Two thousand dollars for the second and subsequent
37 violations.

1 (2) The commissioner shall waive collection of the penalty if the
2 employer corrects the violation within thirty days of receiving a
3 notice of the violation and the notice is for a first violation.

4 (3) The commissioner may waive collection of any penalties if the
5 commissioner determines the violation to be an inadvertent error by
6 the employer.

7 (4) Monetary penalties collected under this section shall be
8 deposited in the family and medical leave enforcement account.

9 (5) The department shall enforce the collection of penalties
10 through conference and conciliation.

11 (6) These penalties may be appealed as provided in RCW 50A.04.500
12 through 50A.04.595 (as recodified by this act).

13 **Sec. 63.** RCW 50A.04.660 and 2017 3rd sp.s. c 5 s 24 are each
14 amended to read as follows:

15 An employer may appeal any adverse decision by the department
16 ~~((regarding the))~~ related to voluntary plans. ~~((and))~~ An employee may
17 appeal any adverse decision by an employer ~~(('s denial of liability~~
18 ~~upon the claim of an employee for family or medical leave benefits~~
19 ~~under an approved plan, in the manner specified under))~~ or the
20 employer's agent related to voluntary plans. Appeals are subject to
21 RCW 50A.04.500 (as recodified by this act).

22 **Sec. 64.** RCW 50A.04.900 and 2017 3rd sp.s. c 5 s 101 are each
23 amended to read as follows:

24 If any part of this ~~((chapter))~~ title is found to be in conflict
25 with federal requirements that are a prescribed condition to the
26 allocation of federal funds to the state or the eligibility of
27 employers in this state for federal unemployment tax credits, the
28 conflicting part of this ~~((chapter))~~ title is inoperative solely to
29 the extent of the conflict, and the finding or determination does not
30 affect the operation of the remainder of this ~~((chapter))~~ title.
31 Rules adopted under this ~~((chapter))~~ title must meet federal
32 requirements that are a necessary condition to the receipt of federal
33 funds by the state or the granting of federal unemployment tax
34 credits to employers in this state.

35 **Sec. 65.** RCW 50.29.021 and 2017 3rd sp.s. c 5 s 83 are each
36 amended to read as follows:

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

4 (2)(a) An experience rating account shall be established and
5 maintained for each employer, except employers as described in RCW
6 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
7 payments in lieu of contributions, taxable local government employers
8 as described in RCW 50.44.035, and those employers who are required
9 to make payments in lieu of contributions, based on existing records
10 of the employment security department.

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

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

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

25 (ii) RCW 50.20.050 (1)(b)(v) through (x) or (2)(b)(v) through
26 (x).

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

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

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

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

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

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

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

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

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

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

32 (h) With respect to claims where the minimum amount payable
33 weekly is increased to one hundred fifty-five dollars pursuant to RCW
34 50.20.1201(3), benefits paid that exceed the benefits that would have
35 been paid if the minimum amount payable weekly had been calculated
36 pursuant to RCW 50.20.120 shall not be charged to the experience
37 rating account of any contribution paying employer.

38 (i) Upon approval of an individual's training benefits plan
39 submitted in accordance with RCW 50.22.155(2), an individual is
40 considered enrolled in training, and regular benefits beginning with

1 the week of approval shall not be charged to the experience rating
2 account of any contribution paying employer.

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

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

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

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

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

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

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

36 (vi) Was hired to replace an employee who is a member of the
37 military reserves or National Guard and was called to federal active
38 military service by the president of the United States and is
39 subsequently laid off when that employee is reemployed by their

1 employer upon release from active duty within the time provided for
2 reemployment in RCW 73.16.035; or

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

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

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

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

38 (a) For the purposes of this subsection, "adequately" means
39 providing accurate information of sufficient quantity and quality

1 that would allow a reasonable person to determine eligibility for
2 benefits.

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

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

10 (B) Twenty percent of the total current claims against the
11 employer.

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

15 **Sec. 66.** RCW 26.23.060 and 2000 c 86 s 4 and 2000 c 29 s 1 are
16 each reenacted and amended to read as follows:

17 (1) The division of child support may issue a notice of payroll
18 deduction:

19 (a) As authorized by a support order that contains a notice
20 clearly stating that child support may be collected by withholding
21 from earnings, wages, or benefits without further notice to the
22 obligated parent; or

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

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

31 (a) In the manner prescribed for the service of a summons in a
32 civil action;

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

34 (c) By electronic means if there is an agreement between the
35 secretary and the person, firm, corporation, association, political
36 subdivision, department of the state, or agency, subdivision, or
37 instrumentality of the United States to accept service by electronic
38 means; or

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

6 (3) Service of a notice of payroll deduction upon an employer or
7 employment security department requires the employer or employment
8 security department to immediately make a mandatory payroll deduction
9 from the responsible parent's unpaid disposable earnings or
10 unemployment compensation benefits. The employer or employment
11 security department shall thereafter deduct each pay period the
12 amount stated in the notice divided by the number of pay periods per
13 month. The payroll deduction each pay period shall not exceed fifty
14 percent of the responsible parent's disposable earnings.

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

18 (5) The notice of payroll deduction shall be in writing and
19 include:

20 (a) The name and social security number of the responsible
21 parent;

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

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

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

30 (e) A notice to the responsible parent warning the responsible
31 parent that, despite the payroll deduction, the responsible parent's
32 privileges to obtain and maintain a license, as defined in RCW
33 74.20A.320, may not be renewed, or may be suspended if the parent is
34 not in compliance with a support order as defined in RCW 74.20A.320.

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

38 (7) An employer or employment security department that receives a
39 notice of payroll deduction shall make immediate deductions from the
40 responsible parent's unpaid disposable earnings and remit proper

1 amounts to the Washington state support registry within seven working
2 days of the date the earnings are payable to the responsible parent.

3 (8) An employer, or the employment security department, upon whom
4 a notice of payroll deduction is served, shall make an answer to the
5 division of child support within twenty days after the date of
6 service. The answer shall confirm compliance and institution of the
7 payroll deduction or explain the circumstances if no payroll
8 deduction is in effect. The answer shall also state whether the
9 responsible parent is employed by or receives earnings from the
10 employer or receives unemployment compensation benefits from the
11 employment security department, whether the employer or employment
12 security department anticipates paying earnings or unemployment
13 compensation benefits and the amount of earnings. If the responsible
14 parent is no longer employed, or receiving earnings from the
15 employer, the answer shall state the present employer's name and
16 address, if known. If the responsible parent is no longer receiving
17 unemployment compensation benefits from the employment security
18 department, the answer shall state the present employer's name and
19 address, if known.

20 The returned answer or a payment remitted to the division of
21 child support by the employer constitutes proof of service of the
22 notice of payroll deduction in the case where the notice was served
23 by regular mail.

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

30 (10) The notice of payroll deduction shall remain in effect until
31 released by the division of child support, the court enters an order
32 terminating the notice and approving an alternate arrangement under
33 RCW 26.23.050, or until the employer no longer employs the
34 responsible parent and is no longer in possession of or owing any
35 earnings to the responsible parent. The employer shall promptly
36 notify the office of support enforcement when the employer no longer
37 employs the parent subject to the notice. For the employment security
38 department, the notice of payroll deduction shall remain in effect
39 until released by the division of child support or until the court
40 enters an order terminating the notice.

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

6 **Sec. 67.** RCW 43.20A.080 and 1997 c 58 s 1005 are each amended to
7 read as follows:

8 (1) The department shall provide the employment security
9 department quarterly with the names and social security numbers of
10 all clients in the WorkFirst program and any successor state welfare
11 program.

12 (2) The information provided by the employment security
13 department under RCW 50.13.060 for statistical analysis and welfare
14 program evaluation purposes may be used only for statistical
15 analysis, research, and evaluation purposes as provided in RCW
16 74.08A.410 and 74.08A.420. Through individual matches with accessed
17 employment security department confidential employer wage files, only
18 aggregate, statistical, group level data shall be reported. Data
19 sharing by the employment security department may be extended to
20 include the office of financial management and other such
21 governmental entities with oversight responsibility for this program.

22 (3) The department and other agencies of state government shall
23 protect the privacy of confidential personal data supplied under RCW
24 50.13.060 consistent with federal law, chapters 50.13 and 50A.---
25 (the new chapter created in section 84 of this act) RCW, and the
26 terms and conditions of a formal data-sharing agreement between the
27 employment security department and agencies of state government,
28 however the misuse or unauthorized use of confidential data supplied
29 by the employment security department is subject to the penalties in
30 RCW 50.13.080 and section 81 of this act.

31 **Sec. 68.** RCW 42.56.410 and 2005 c 274 s 421 are each amended to
32 read as follows:

33 Records maintained by the employment security department and
34 subject to chapter 50.13 or 50A.--- (the new chapter created in
35 section 84 of this act) RCW if provided to another individual or
36 organization for operational, research, or evaluation purposes are
37 exempt from disclosure under this chapter.

1 NEW SECTION. **Sec. 69.** Any assignment, pledge, or encumbrance of
2 any right to benefits that are or may become due or payable under
3 this title is void. Such rights to benefits are exempt from levy,
4 execution, attachment, or any other remedy whatsoever provided for
5 the collection of debts, except as provided in RCW 50A.04.060 (as
6 recodified by this act). Benefits received by any employee, so long
7 as they are not commingled with other funds of the recipient, are
8 exempt from any remedy whatsoever for collection of all debts except
9 debts incurred for necessities furnished to such employee or the
10 employee's spouse or dependents during the time when such individual
11 was receiving family or medical leave. Any waiver of any exemption
12 provided for in this section is void.

13 NEW SECTION. **Sec. 70.** (1) If information provided to the
14 department by another governmental agency is held private and
15 confidential by state or federal law, the department may not release
16 such information unless otherwise provided in this title.

17 (2) Information provided to the department by another
18 governmental entity conditioned upon privacy and confidentiality
19 under a provision of law is to be held private and confidential
20 according to the agreement between the department and the other
21 governmental agency unless otherwise provided in this title.

22 (3) The department may hold private and confidential information
23 obtained for statistical analysis, research, or study purposes if the
24 information was supplied voluntarily, conditioned upon maintaining
25 confidentiality of the information.

26 (4) Persons requesting disclosure of information held by the
27 department under subsection (1) or (2) of this section shall request
28 such disclosure from the agency providing the information to the
29 department rather than from the department.

30 NEW SECTION. **Sec. 71.** (1) Any information or records concerning
31 an individual or employer obtained by the department pursuant to the
32 administration of this title shall be private and confidential,
33 except as otherwise provided in this chapter or RCW 50A.04.205 (as
34 recodified by this act).

35 (2) This chapter does not create a rule of evidence.

1 NEW SECTION. **Sec. 72.** The commissioner has the authority to
2 adopt, amend, or rescind rules interpreting and implementing this
3 chapter.

4 NEW SECTION. **Sec. 73.** (1) An individual shall have access to
5 all records and information concerning that individual held by the
6 department unless the information is exempt from disclosure under RCW
7 42.56.410.

8 (2) An employer shall have access to:

9 (a) Its own records relating to any claim or determination for
10 family or medical leave benefits by an individual;

11 (b) Records and information relating to a decision to allow or
12 deny benefits if the decision is based on material information
13 provided by the employer; and

14 (c) Records and information related to that employer's premium
15 assessment.

16 (3) The department may disclose records and information deemed
17 confidential under this chapter to a third party acting on behalf of
18 an individual or employer that would otherwise be eligible to receive
19 records under subsection (1) or (2) of this section when the
20 department receives a signed release from the individual or employer.
21 The release must include a statement:

22 (a) Specifically identifying the information that is to be
23 disclosed;

24 (b) That state government files will be accessed to obtain that
25 information;

26 (c) Of the specific purpose or purposes for which the information
27 is sought and a statement that information obtained under the release
28 will only be used for that purpose or purposes; and

29 (d) Indicating all the parties who may receive the information
30 disclosed.

31 NEW SECTION. **Sec. 74.** (1) Any interested party, as defined by
32 rule, in a proceeding before the appeal tribunal or commissioner
33 shall have access to any information or records deemed private and
34 confidential under this chapter if the information or records are
35 material to the issues in that proceeding.

36 (2) No decision by the commissioner or the appeals tribunal shall
37 be deemed private and confidential under this chapter unless the
38 decision is based on information obtained in a closed hearing.

1 NEW SECTION. **Sec. 75.** (1) Information or records deemed private
2 and confidential under this chapter shall be available to parties to
3 judicial or formal administrative proceedings only upon a written
4 finding by the presiding officer that the need for the information or
5 records in the proceeding outweighs any reasons for the privacy and
6 confidentiality of the information or records.

7 (2) Information or records deemed private and confidential under
8 this chapter shall not be available in discovery proceedings unless
9 the court in which the action has been filed has made the finding in
10 subsection (1) of this section. A judicial or administrative subpoena
11 directed to the department must contain this finding. A subpoena for
12 records or information under this section must be submitted in a
13 manner prescribed by the department.

14 NEW SECTION. **Sec. 76.** (1) The department may enter into data-
15 sharing contracts and may disclose records and information deemed
16 confidential to state government agencies under this chapter only if
17 permitted under subsection (2) of this section and section 78 of this
18 act. A state government agency must need the records or information
19 for an official purpose and must also provide:

20 (a) An application in writing to the department for the records
21 or information containing a statement of the official purposes for
22 which the state government agency needs the information or records
23 and specifically identify the records or information sought from the
24 department; and

25 (b) A written verification of the need for the specific
26 information from the director, commissioner, chief executive, or
27 other official of the requesting state government agency either on
28 the application or on a separate document.

29 (2) The department may disclose information or records deemed
30 confidential under this chapter to the following state government
31 agencies:

32 (a) To the department of social and health services to identify
33 child support obligations;

34 (b) To the department of revenue to determine potential tax
35 liability or employer compliance with registration and licensing
36 requirements;

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

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

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

6 (f) To the office of the attorney general for purposes of legal
7 representation;

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

10 (h) To the office of administrative hearings for the purpose of
11 administering the administrative appeal process;

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

14 (j) To the consolidated technology services agency for the
15 purpose of enterprise technology support.

16 NEW SECTION. **Sec. 77.** The state legislature may have access to
17 information or records deemed private and confidential under this
18 chapter if the following requirements are met:

19 (1) The legislature, a legislative committee, a legislator, or a
20 staff member finds that the information or records are necessary and
21 for official purposes; and

22 (2) The individuals and organizations whose information is
23 contained within the confidential records requested must provide a
24 signed disclosure that manifests the individual's or organization's
25 informed consent to the disclosure of the records or information to
26 the legislature, legislative committee, legislator, or staff member.

27 NEW SECTION. **Sec. 78.** The department may disclose information
28 or records deemed confidential under this chapter to the federal
29 internal revenue service if the information is deemed necessary by
30 the department to administer RCW 50A.04.055 (as recodified by this
31 act).

32 NEW SECTION. **Sec. 79.** Nothing in this chapter shall be
33 construed as limiting or restricting the effect of RCW 42.56.070(8).

34 NEW SECTION. **Sec. 80.** The family and medical leave program of
35 the department may disclose information or records deemed private and
36 confidential under this chapter to any private person or

1 organization, and by extension, the agents of any private person or
2 organization, when the disclosure is necessary to permit private
3 contracting parties to assist in the operation, management, and
4 implementation of the department in instances where certain
5 departmental functions may be delegated to private parties to
6 increase the department's efficiency or quality of service to the
7 public. The private person or organization shall use the information
8 or records solely for the purpose for which the information was
9 disclosed and shall be bound by the same rules of privacy and
10 confidentiality as department employees.

11 NEW SECTION. **Sec. 81.** (1) All private persons, government
12 agencies, and organizations authorized to receive information from
13 the department under this chapter have an affirmative obligation to
14 take all reasonable actions necessary to prevent the disclosure of
15 confidential information.

16 (2) The disclosure of any records or information by a private
17 person, government agency, or organization that obtained the records
18 or information from the department under this chapter is prohibited
19 unless expressly permitted by this chapter.

20 (3) If misuse or an unauthorized disclosure of confidential
21 records or information occurs, all parties who are aware of the
22 violation must inform the department immediately and must take all
23 reasonably available actions to rectify the disclosure to the
24 department's standards.

25 (4) The misuse or unauthorized release of records or information
26 deemed private and confidential under this chapter by any private
27 person, government agency, or organization to which access is
28 permitted by this section shall subject the person, government
29 agency, or organization to a civil penalty of up to twenty thousand
30 dollars in 2018 and annually adjusted by the department based on
31 changes in the United States consumer price index for all urban
32 consumers. Other applicable sanctions under state and federal law
33 also apply.

34 (5) Suit to enforce this section shall be brought by the attorney
35 general and the amount of any penalties collected shall be paid into
36 the department's family and medical leave enforcement account. The
37 attorney general may recover reasonable attorneys' fees for any
38 action brought to enforce this section.

1 NEW SECTION. **Sec. 82.** Where the family and medical leave
2 program of the department contracts to provide services to other
3 governmental or private organizations, the department may disclose to
4 those organizations information or records deemed private and
5 confidential that have been acquired in the performance of the
6 department's obligations under the contracts.

7 NEW SECTION. **Sec. 83.** Nothing in this chapter shall prevent the
8 disclosure of information or records deemed private and confidential
9 under this chapter if all details identifying an individual or
10 employing unit are deleted so long as the information or records
11 cannot be foreseeably combined with other publicly available
12 information to reveal the identity of an individual or employing
13 unit.

14 NEW SECTION. **Sec. 84.** Sections 70 through 83 of this act
15 constitute a new chapter in Title 50A RCW.

16 NEW SECTION. **Sec. 85.** RCW 50A.04.005, 50A.04.010, 50A.04.195,
17 50A.04.200, 50A.04.205, 50A.04.210, 50A.04.215, 50A.04.220,
18 50A.04.225, 50A.04.235, 50A.04.255, 50A.04.265, and 50A.04.900 are
19 each recodified as sections in a new chapter in Title 50A RCW.

20 NEW SECTION. **Sec. 86.** RCW 50A.04.105, 50A.04.110, 50A.04.115,
21 50A.04.120, and 50A.04.125 are each recodified as sections in a new
22 chapter in Title 50A RCW.

23 NEW SECTION. **Sec. 87.** Section 69 of this act is codified and
24 RCW 50A.04.015, 50A.04.020, 50A.04.030, 50A.04.035, 50A.04.040,
25 50A.04.045, 50A.04.050, 50A.04.055, 50A.04.060, 50A.04.065,
26 50A.04.240, and 50A.04.250 are each recodified as sections in a new
27 chapter in Title 50A RCW.

28 NEW SECTION. **Sec. 88.** RCW 50A.04.230 is recodified as a section
29 in a new chapter in Title 50A RCW.

30 NEW SECTION. **Sec. 89.** RCW 50A.04.600, 50A.04.605, 50A.04.610,
31 50A.04.615, 50A.04.620, 50A.04.625, 50A.04.630, 50A.04.635,
32 50A.04.640, 50A.04.645, 50A.04.650, 50A.04.655, 50A.04.660, and

1 50A.04.665 are each recodified as sections in a new chapter in Title
2 50A RCW.

3 NEW SECTION. **Sec. 90.** RCW 50A.04.025, 50A.04.245, and
4 50A.04.260 are each recodified as sections in a new chapter in Title
5 50A RCW.

6 NEW SECTION. **Sec. 91.** RCW 50A.04.085, 50A.04.095, and
7 50A.04.100 are each recodified as sections in a new chapter in Title
8 50A RCW.

9 NEW SECTION. **Sec. 92.** RCW 50A.04.090, 50A.04.130, 50A.04.135,
10 50A.04.140, 50A.04.145, 50A.04.150, 50A.04.155, 50A.04.160,
11 50A.04.165, 50A.04.170, 50A.04.175, 50A.04.180, 50A.04.185, and
12 50A.04.190 are each recodified as sections in a new chapter in Title
13 50A RCW.

14 NEW SECTION. **Sec. 93.** RCW 50A.04.500, 50A.04.505, 50A.04.510,
15 50A.04.515, 50A.04.520, 50A.04.525, 50A.04.530, 50A.04.535,
16 50A.04.540, 50A.04.545, 50A.04.550, 50A.04.555, 50A.04.560,
17 50A.04.565, 50A.04.570, 50A.04.575, 50A.04.580, 50A.04.585,
18 50A.04.590, and 50A.04.595 are each recodified as sections in a new
19 chapter in Title 50A RCW.

20 NEW SECTION. **Sec. 94.** RCW 50A.04.070, 50A.04.075, and
21 50A.04.080 are each recodified as sections in a new chapter in Title
22 50A RCW.

--- END ---