

ESSB 5190 - H COMM AMD

By Committee on Labor & Workplace Standards

ADOPTED AND ENGROSSED 04/08/2021

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

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

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

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

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

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

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

15 (d) Carelessness or negligence of such degree or recurrence to  
16 show an intentional or substantial disregard of the employer's  
17 interest.

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

22 (a) Insubordination showing a deliberate, willful, or purposeful  
23 refusal to follow the reasonable directions or instructions of the  
24 employer;

25 (b) Repeated inexcusable tardiness following warnings by the  
26 employer;

27 (c) Dishonesty related to employment, including but not limited  
28 to deliberate falsification of company records, theft, deliberate  
29 deception, or lying;

30 (d) Repeated and inexcusable absences, including absences for  
31 which the employee was able to give advance notice and failed to do  
32 so;

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

5 (f) Violation of a company rule if the rule is reasonable and if  
6 the claimant knew or should have known of the existence of the rule;  
7 or

8 (g) Violations of law by the claimant while acting within the  
9 scope of employment that substantially affect the claimant's job  
10 performance or that substantially harm the employer's ability to do  
11 business.

12 (3) "Misconduct" does not include:

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

15 (b) Inadvertence or ordinary negligence in isolated instances;  
16 ((~~or~~))

17 (c) Good faith errors in judgment or discretion; or

18 (d) (i) A health care worker who left work for the period of  
19 quarantine consistent with the recommended guidance from the United  
20 States centers for disease control and prevention or subject to the  
21 direction of the state or local health jurisdiction because of  
22 exposure to or contracting the disease that is the subject of the  
23 declaration of the public health emergency.

24 (ii) For purposes of this subsection, "health care worker" means  
25 an individual who worked at a health care facility as defined in RCW  
26 9A.50.010, and was directly involved in the delivery of health  
27 services.

28 (4) "Gross misconduct" means a criminal act in connection with an  
29 individual's work for which the individual has been convicted in a  
30 criminal court, or has admitted committing, or conduct connected with  
31 the individual's work that demonstrates a flagrant and wanton  
32 disregard of and for the rights, title, or interest of the employer  
33 or a fellow employee.

34 **Sec. 2.** RCW 50.20.010 and 2021 c 2 s 8 are each amended to read  
35 as follows:

36 (1) An unemployed individual shall be eligible to receive waiting  
37 period credits or benefits with respect to any week in his or her  
38 eligibility period only if the commissioner finds that:

1 (a) The individual has registered for work at, and thereafter has  
2 continued to report at, an employment office in accordance with such  
3 regulation as the commissioner may prescribe, except that the  
4 commissioner may by regulation waive or alter either or both of the  
5 requirements of this subdivision as to individuals attached to  
6 regular jobs and as to such other types of cases or situations with  
7 respect to which the commissioner finds that the compliance with such  
8 requirements would be oppressive, or would be inconsistent with the  
9 purposes of this title;

10 (b) The individual has filed an application for an initial  
11 determination and made a claim for waiting period credit or for  
12 benefits in accordance with the provisions of this title;

13 (c) The individual is able to work, and is available for work in  
14 any trade, occupation, profession, or business for which the  
15 individual is reasonably fitted.

16 (i) To be available for work, an individual must be ready, able,  
17 and willing, immediately to accept any suitable work which may be  
18 offered to him or her and must be actively seeking work pursuant to  
19 customary trade practices and through other methods when so directed  
20 by the commissioner or the commissioner's agents. If a labor  
21 agreement or dispatch rules apply, customary trade practices must be  
22 in accordance with the applicable agreement or rules.

23 (ii) Until June 30, 2021, an individual under quarantine or  
24 isolation, as defined by the department of health, as directed by a  
25 public health official during the novel coronavirus outbreak pursuant  
26 to the gubernatorial declaration of emergency of February 29, 2020,  
27 will meet the requirements of this subsection (1)(c) if the  
28 individual is able to perform, available to perform, and actively  
29 seeking work which can be performed while under quarantine or  
30 isolation.

31 (iii) For the purposes of this subsection, "customary trade  
32 practices" includes compliance with an electrical apprenticeship  
33 training program that includes a recognized referral system under  
34 apprenticeship program standards approved by the Washington state  
35 apprenticeship and training council;

36 (d) The individual has been unemployed for a waiting period of  
37 one week;

38 (e) The individual participates in reemployment services if the  
39 individual has been referred to reemployment services pursuant to the

1 profiling system established by the commissioner under RCW 50.20.011,  
2 unless the commissioner determines that:

3 (i) The individual has completed such services; or

4 (ii) There is justifiable cause for the claimant's failure to  
5 participate in such services; and

6 (f) As to weeks which fall within an extended benefit period as  
7 defined in RCW 50.22.010, the individual meets the terms and  
8 conditions of RCW 50.22.020 with respect to benefits claimed in  
9 excess of twenty-six times the individual's weekly benefit amount.

10 (2) An individual's eligibility period for regular benefits shall  
11 be coincident to his or her established benefit year. An individual's  
12 eligibility period for additional or extended benefits shall be the  
13 periods prescribed elsewhere in this title for such benefits.

14 (3) (a) For any weeks of unemployment insurance benefits when the  
15 one week waiting period is fully paid or fully reimbursed by the  
16 federal government, subsection (1) (d) of this section is waived.

17 (b) For any weeks of unemployment insurance benefits when the one  
18 week waiting period is partially paid or partially reimbursed by the  
19 federal government, the department may, by rule, elect to waive  
20 subsection (1) (d) of this section.

21 (4) During the weeks of a public health emergency, an unemployed  
22 individual may also meet the requirements of subsection (1) (c) of  
23 this section if:

24 (a) The unemployed individual is able to perform, available to  
25 perform, and actively seeking suitable work which can be performed  
26 for an employer from the individual's home; and

27 (b) The unemployed individual or another individual residing with  
28 the unemployed individual is at higher risk of severe illness or  
29 death from the disease that is the subject of the public health  
30 emergency because the higher risk individual:

31 (i) Was in an age category that is defined as high risk for the  
32 disease that is the subject of the public health emergency by:

33 (A) The federal centers for disease control and prevention;

34 (B) The department of health; or

35 (C) The equivalent agency in the state where the individual  
36 resides; or

37 (ii) Has an underlying health condition, verified as required by  
38 the department by rule, that is identified as a risk factor for the  
39 disease that is the subject of the public health emergency by:

40 (A) The federal centers for disease control and prevention;

1 (B) The department of health; or

2 (C) The equivalent agency in the state where the individual  
3 resides.

4 (5)(a) During the weeks of a public health emergency, an  
5 unemployed health care worker may also meet the requirements of  
6 subsection (1)(c) of this section if the unemployed health care  
7 worker described in RCW 50.20.050(3) and 50.29.021(1)(c)(iii) is able  
8 to perform, available to perform, and actively seeking suitable work  
9 which will commence after quarantine or which can be performed for an  
10 employer from the individual's home.

11 (b) For purposes of this subsection, "health care worker" means  
12 an individual who worked at a health care facility as defined in RCW  
13 9A.50.010, and was directly involved in the delivery of health  
14 services.

15 **Sec. 3.** RCW 50.20.050 and 2021 c 2 s 10 are each amended to read  
16 as follows:

17 (1) With respect to separations that occur on or after September  
18 6, 2009, and for separations that occur before April 4, 2021:

19 (a) A claimant shall be disqualified from benefits beginning with  
20 the first day of the calendar week in which the claimant left work  
21 voluntarily without good cause and thereafter for seven calendar  
22 weeks and until the claimant obtains bona fide work in employment  
23 covered by this title and earned wages in that employment equal to  
24 seven times the claimant's weekly benefit amount. Good cause reasons  
25 to leave work are limited to reasons listed in (b) of this  
26 subsection.

27 The disqualification shall continue if the work obtained is a  
28 mere sham to qualify for benefits and is not bona fide work. In  
29 determining whether work is of a bona fide nature, the commissioner  
30 shall consider factors including but not limited to the following:

31 (i) The duration of the work;

32 (ii) The extent of direction and control by the employer over the  
33 work; and

34 (iii) The level of skill required for the work in light of  
35 ~~((the))~~ the claimant's training and experience.

36 (b) A claimant has good cause and is not disqualified from  
37 benefits under (a) of this subsection only under the following  
38 circumstances:

1 (i) The claimant has left work to accept a bona fide offer of  
2 bona fide work as described in (a) of this subsection;

3 (ii) The separation was necessary because of the illness or  
4 disability of the claimant or the death, illness, or disability of a  
5 member of the claimant's immediate family if:

6 (A) The claimant pursued all reasonable alternatives to preserve  
7 the claimant's employment status by requesting a leave of absence, by  
8 having promptly notified the employer of the reason for the absence,  
9 and by having promptly requested reemployment when again able to  
10 assume employment. These alternatives need not be pursued, however,  
11 when they would have been a futile act, including those instances  
12 when the futility of the act was a result of a recognized labor/  
13 management dispatch system; and

14 (B) The claimant terminated the claimant's employment status, and  
15 is not entitled to be reinstated to the same position or a comparable  
16 or similar position;

17 (iii) The claimant: (A) Left work to relocate for the employment  
18 of a spouse or domestic partner that is outside the existing labor  
19 market area; and (B) remained employed as long as was reasonable  
20 prior to the move;

21 (iv) The separation was necessary to protect the claimant or the  
22 claimant's immediate family members from domestic violence, as  
23 defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

24 (v) The claimant's usual compensation was reduced by twenty-five  
25 percent or more;

26 (vi) The claimant's usual hours were reduced by twenty-five  
27 percent or more;

28 (vii) The claimant's worksite changed, such change caused a  
29 material increase in distance or difficulty of travel, and, after the  
30 change, the commute was greater than is customary for workers in the  
31 claimant's job classification and labor market;

32 (viii) The claimant's worksite safety deteriorated, the claimant  
33 reported such safety deterioration to the employer, and the employer  
34 failed to correct the hazards within a reasonable period of time;

35 (ix) The claimant left work because of illegal activities in the  
36 claimant's worksite, the claimant reported such activities to the  
37 employer, and the employer failed to end such activities within a  
38 reasonable period of time;

39 (x) The claimant's usual work was changed to work that violates  
40 the claimant's religious convictions or sincere moral beliefs; or

1 (xi) The claimant left work to enter an apprenticeship program  
2 approved by the Washington state apprenticeship training council.  
3 Benefits are payable beginning Sunday of the week prior to the week  
4 in which the claimant begins active participation in the  
5 apprenticeship program.

6 (2) With respect to separations that occur on or after April 4,  
7 2021:

8 (a) A claimant shall be disqualified from benefits beginning with  
9 the first day of the calendar week in which the claimant has left  
10 work voluntarily without good cause and thereafter for seven calendar  
11 weeks and until the claimant has obtained bona fide work in  
12 employment covered by this title and earned wages in that employment  
13 equal to seven times the claimant's weekly benefit amount. Good cause  
14 reasons to leave work are limited to reasons listed in (b) of this  
15 subsection.

16 The disqualification shall continue if the work obtained is a  
17 mere sham to qualify for benefits and is not bona fide work. In  
18 determining whether work is of a bona fide nature, the commissioner  
19 shall consider factors including but not limited to the following:

20 (i) The duration of the work;

21 (ii) The extent of direction and control by the employer over the  
22 work; and

23 (iii) The level of skill required for the work in light of the  
24 claimant's training and experience.

25 (b) A claimant has good cause and is not disqualified from  
26 benefits under (a) of this subsection only under the following  
27 circumstances:

28 (i) The claimant has left work to accept a bona fide offer of  
29 bona fide work as described in (a) of this subsection;

30 (ii) The separation was necessary because of the illness or  
31 disability of the claimant or the death, illness, or disability of a  
32 member of the claimant's immediate family if:

33 (A) The claimant made reasonable efforts to preserve the  
34 claimant's employment status by requesting a leave of absence, by  
35 having promptly notified the employer of the reason for the absence,  
36 and by having promptly requested reemployment when again able to  
37 assume employment. These alternatives need not be pursued, however,  
38 when they would have been a futile act, including those instances  
39 when the futility of the act was a result of a recognized labor/  
40 management dispatch system; and

1 (B) The claimant terminated the claimant's employment status, and  
2 is not entitled to be reinstated to the same position or a comparable  
3 or similar position;

4 (iii) The claimant: (A) Left work to relocate for the employment  
5 of a spouse or domestic partner that is outside the existing labor  
6 market area; and (B) remained employed as long as was reasonable  
7 prior to the move;

8 (iv) The separation was necessary to protect the claimant or the  
9 claimant's immediate family members from domestic violence, as  
10 defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

11 (v) The claimant's usual compensation was reduced by twenty-five  
12 percent or more;

13 (vi) The claimant's usual hours were reduced by twenty-five  
14 percent or more;

15 (vii) The claimant's worksite changed, such change caused a  
16 material increase in distance or difficulty of travel, and, after the  
17 change, the commute was greater than is customary for workers in the  
18 individual's job classification and labor market;

19 (viii) The claimant's worksite safety deteriorated, the claimant  
20 reported such safety deterioration to the employer, and the employer  
21 failed to correct the hazards within a reasonable period of time;

22 (ix) The claimant left work because of illegal activities in the  
23 claimant's worksite, the claimant reported such activities to the  
24 employer, and the employer failed to end such activities within a  
25 reasonable period of time;

26 (x) The claimant's usual work was changed to work that violates  
27 the claimant's religious convictions or sincere moral beliefs;

28 (xi) The claimant left work to enter an apprenticeship program  
29 approved by the Washington state apprenticeship training council.  
30 Benefits are payable beginning Sunday of the week prior to the week  
31 in which the claimant begins active participation in the  
32 apprenticeship program; or

33 (xii) During a public health emergency:

34 (A) The claimant was unable to perform the claimant's work for  
35 the employer from the claimant's home;

36 (B) The claimant is able to perform, available to perform, and  
37 can actively seek suitable work which can be performed for an  
38 employer from the claimant's home; and

39 (C) The claimant or another individual residing with the claimant  
40 is at higher risk of severe illness or death from the disease that is



1 the subject of the public health emergency because the higher risk  
2 individual:

3 (I) Was in an age category that is defined as high risk for the  
4 disease that is the subject of the public health emergency by the  
5 federal centers for disease control and prevention, the department of  
6 health, or the equivalent agency in the state where the individual  
7 resides; or

8 (II) Has an underlying health condition, verified as required by  
9 the department by rule, that is identified as a risk factor for the  
10 disease that is the subject of the public health emergency by the  
11 federal centers for disease control and prevention, the department of  
12 health, or the equivalent agency in the state where the individual  
13 resides.

14 (3) With respect to claims that occur on or after July 4, 2021, a  
15 claimant has good cause and is not disqualified from benefits under  
16 subsection (2)(a) of this section under the following circumstances,  
17 in addition to those listed under subsection (2)(b) of this section,  
18 if, during a public health emergency, the claimant worked at a health  
19 care facility as defined in RCW 9A.50.010, was directly involved in  
20 the delivery of health services, and left work for the period of  
21 quarantine consistent with the recommended guidance from the United  
22 States centers for disease control and prevention or subject to the  
23 direction of the state or local health jurisdiction because of  
24 exposure to or contracting the disease that is the subject of the  
25 declaration of the public health emergency.

26 (4) Notwithstanding subsection (1) of this section, a claimant  
27 who was simultaneously employed in full-time employment and part-time  
28 employment and is otherwise eligible for benefits from the loss of  
29 the full-time employment shall not be disqualified from benefits  
30 because the claimant:

31 (a) Voluntarily quit the part-time employment before the loss of  
32 the full-time employment; and

33 (b) Did not have prior knowledge that the claimant would be  
34 separated from full-time employment.

35 **Sec. 4.** RCW 50.29.021 and 2021 c 2 s 16 are each amended to read  
36 as follows:

37 (1)(a) An experience rating account shall be established and  
38 maintained for each employer, except employers as described in RCW  
39 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make

1 payments in lieu of contributions, taxable local government employers  
2 as described in RCW 50.44.035, and those employers who are required  
3 to make payments in lieu of contributions, based on existing records  
4 of the employment security department.

5 (b) Benefits paid to an eligible individual shall be charged to  
6 the experience rating accounts of each of such individual's employers  
7 during the individual's base year in the same ratio that the wages  
8 paid by each employer to the individual during the base year bear to  
9 the wages paid by all employers to that individual during that base  
10 year, except as otherwise provided in this section.

11 (c) When the eligible individual's separating employer is a  
12 covered contribution paying base year employer, benefits paid to the  
13 eligible individual shall be charged to the experience rating account  
14 of only the individual's separating employer if the individual  
15 qualifies for benefits under:

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

19 (ii) RCW 50.20.050 (1)(b)(v) through (x) or (2)(b)(v) through  
20 (x); or

21 (iii) During a public health emergency, the claimant worked at a  
22 health care facility as defined in RCW 9A.50.010, was directly  
23 involved in the delivery of health services, and was terminated from  
24 work due to entering quarantine because of exposure to or contracting  
25 the disease that is the subject of the declaration of the public  
26 health emergency.

27 (2) 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 (4) 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) (~~(xii)~~), (2)(b) (iv), (xi), or  
16 (xii), or (3), as applicable, shall not be charged to the experience  
17 rating account of any contribution paying employer.

18 (f) Benefits paid that exceed the benefits that would have been  
19 paid if the weekly benefit amount for the claim had been determined  
20 as one percent of the total wages paid in the individual's base year  
21 shall not be charged to the experience rating account of any  
22 contribution paying employer. This subsection (2)(f) does not apply  
23 to the calculation of contribution rates under RCW 50.29.025 for rate  
24 year 2010 and thereafter.

25 (g) Upon approval of an individual's training benefits plan  
26 submitted in accordance with RCW 50.22.155(2), an individual is  
27 considered enrolled in training, and regular benefits beginning with  
28 the week of approval shall not be charged to the experience rating  
29 account of any contribution paying employer.

30 (h) Training benefits paid to an individual under RCW 50.22.155  
31 shall not be charged to the experience rating account of any  
32 contribution paying employer.

33 (i)(i) Benefits paid during the one week waiting period when the  
34 one week waiting period is fully paid or fully reimbursed by the  
35 federal government shall not be charged to the experience rating  
36 account of any contribution paying employer.

37 (ii) In the event the one week waiting period is partially paid  
38 or partially reimbursed by the federal government, the department  
39 may, by rule, elect to not charge, in full or in part, benefits paid

1 during the one week waiting period to the experience rating account  
2 of any contribution paying employer.

3 (j) Benefits paid for all weeks starting with the week ending  
4 March 28, 2020, and ending with the week ending May 30, 2020, shall  
5 not be charged to the experience rating account of any contribution  
6 paying employer.

7 (3) (a) A contribution paying base year employer, except employers  
8 as provided in subsection (5) of this section, not otherwise eligible  
9 for relief of charges for benefits under this section, may receive  
10 such relief if the benefit charges result from payment to an  
11 individual who:

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

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

17 (iii) Is unemployed as a result of closure or severe curtailment  
18 of operation at the employer's plant, building, worksite, or other  
19 facility. This closure must be for reasons directly attributable to a  
20 catastrophic occurrence such as fire, flood, or other natural  
21 disaster, or to the presence of any dangerous, contagious, or  
22 infectious disease that is the subject of a public health emergency  
23 at the employer's plant, building, worksite, or other facility;

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

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

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

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

5 (vii) Worked for an employer for (~~twenty~~) 20 weeks or less, and  
6 was laid off at the end of temporary employment when that employee  
7 temporarily replaced a permanent employee receiving family or medical  
8 leave benefits under Title 50A RCW, and the layoff is due to the  
9 return of that permanent employee. This subsection (3)(a)(vii)  
10 applies to claims with an effective date on or after January 1, 2020;  
11 or

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

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

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

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

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

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

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

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

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

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

19 NEW SECTION. **Sec. 5.** If any part of sections 1 through 4 of  
20 this act is found to be in conflict with federal requirements that  
21 are a prescribed condition to the allocation of federal funds to the  
22 state or the eligibility of employers in this state for federal  
23 unemployment tax credits, the conflicting part of sections 1 through  
24 4 of this act is inoperative solely to the extent of the conflict,  
25 and the finding or determination does not affect the operation of the  
26 remainder of sections 1 through 4 of this act. Rules adopted under  
27 sections 1 through 4 of this act must meet federal requirements that  
28 are a necessary condition to the receipt of federal funds by the  
29 state or the granting of federal unemployment tax credits to  
30 employers in this state.

31 NEW SECTION. **Sec. 6.** A new section is added to chapter 51.32  
32 RCW to read as follows:

33 (1) For health care employees who are covered under this title,  
34 there exists a prima facie presumption that any infectious or  
35 contagious diseases which are the subject of a public health  
36 emergency are occupational diseases under RCW 51.08.140 during a  
37 public health emergency.

1 (2) The health care employee must provide verification, as  
2 required by the department by rule, to the department or the self-  
3 insurer that the employee is in quarantine or has contracted the  
4 disease after exposure to the infectious or contagious disease that  
5 is the subject of the public health emergency.

6 (3) This presumption of occupational disease may be rebutted by  
7 clear and convincing evidence that:

8 (a) The exposure to the infectious or contagious disease which is  
9 the subject of the public health emergency occurred from other  
10 employment or nonemployment activities; or

11 (b) The employee was working from the employee's home or other  
12 location not under the employer's control, on leave from the  
13 employee's employment, or some combination thereof, for the period of  
14 quarantine outlined for the disease immediately prior to the  
15 employee's date of disease contraction or period of incapacity  
16 resulting from exposure to the disease which is the subject of the  
17 public health emergency.

18 (4) (a) RCW 51.32.090(7) does not apply to an occupational disease  
19 under this section except that no worker shall receive compensation  
20 for or during the day on which the occupational disease was  
21 contracted. For the purposes of this subsection (4), the day on which  
22 the occupational disease was contracted is whichever date occurs  
23 first of the following:

24 (i) The date that the worker first missed work due to symptoms of  
25 the infectious or contagious disease;

26 (ii) The date the worker was quarantined by a medical provider or  
27 public health official; or

28 (iii) The date the worker received a positive test result  
29 confirming contraction of the infectious or contagious disease.

30 (b) If leave or similar benefits are paid to the worker as part  
31 of a federal or state program for these employees during the public  
32 health emergency, total temporary disability benefits are not payable  
33 for the same period of time covered by this federal or state program.

34 (5) Costs of claims allowed under this section shall not affect  
35 the experience rating of employers insured by the state fund. When  
36 calculating assessments due to the department for which total claim  
37 costs are the basis, self-insured employers and self-insurance  
38 hospital groups formed under RCW 51.14.150 and 51.14.160 may deduct  
39 the cost of payments made under this section from the total of all  
40 claim costs reported.

1 (6) For purposes of this section:

2 (a) "Health care employee" means an employee of any health care  
3 facility or other organization that provides emergency or medical  
4 services who has or likely has had direct contact with any person who  
5 has been exposed to or tested positive for any infectious or  
6 contagious diseases which are the subject of a public health  
7 emergency.

8 (b) "Health care facility" has the same meaning as in RCW  
9 9A.50.010.

10 (c) "Public health emergency" means a declaration or order that  
11 covers the jurisdiction where the employee was working on the date of  
12 exposure concerning any dangerous, contagious, or infectious  
13 diseases, including a pandemic, and is issued as follows:

14 (i) The president of the United States has declared a national or  
15 regional emergency; or

16 (ii) The governor of Washington declared a state of emergency  
17 under RCW 43.06.010(12).

18 (7) The presumption in subsection (1) of this section takes  
19 effect on the day the national, regional, or state emergency is  
20 declared and continues until this declaration is revoked.

21 (8) The provisions of RCW 51.28.055 concerning time limits for  
22 filing claims for occupational disease apply to claims covered under  
23 this section.

24 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
25 preservation of the public peace, health, or safety, or support of  
26 the state government and its existing public institutions, and takes  
27 effect immediately."

28 Correct the title.

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