

**ESSB 5190** - H COMM AMD

By Committee on Labor & Workplace Standards

**ADOPTED AS AMENDED 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;

1 (d) Repeated and inexcusable absences, including absences for  
2 which the employee was able to give advance notice and failed to do  
3 so;

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

8 (f) Violation of a company rule if the rule is reasonable and if  
9 the claimant knew or should have known of the existence of the rule;  
10 or

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

15 (3) "Misconduct" does not include:

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

18 (b) Inadvertence or ordinary negligence in isolated instances;  
19 ((~~or~~))

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

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

27 (ii) For purposes of this subsection, "health care worker" means  
28 an individual who worked at a health care facility as defined in RCW  
29 9A.50.010, and was directly involved in the delivery of health  
30 services.

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

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

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

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

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

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

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

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

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

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

1 (e) The individual participates in reemployment services if the  
2 individual has been referred to reemployment services pursuant to the  
3 profiling system established by the commissioner under RCW 50.20.011,  
4 unless the commissioner determines that:

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

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

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

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

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

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

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

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

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

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

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

36 (B) The department of health; or

37 (C) The equivalent agency in the state where the individual  
38 resides; or

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

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

5 (B) The department of health; or

6 (C) The equivalent agency in the state where the individual  
7 resides.

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

15 (b) For purposes of this subsection, "health care worker" means  
16 an individual who worked at a health care facility as defined in RCW  
17 9A.50.010, and was directly involved in the delivery of health  
18 services.

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

21 (1) With respect to separations that occur on or after September  
22 6, 2009, and for separations that occur before April 4, 2021:

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

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

35 (i) The duration of the work;

36 (ii) The extent of direction and control by the employer over the  
37 work; and

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

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

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

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

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

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

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

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

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

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

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

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

38 (ix) The claimant left work because of illegal activities in the  
39 claimant's worksite, the claimant reported such activities to the

1 employer, and the employer failed to end such activities within a  
2 reasonable period of time;

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

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

10 (2) With respect to separations that occur on or after April 4,  
11 2021:

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

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

24 (i) The duration of the work;

25 (ii) The extent of direction and control by the employer over the  
26 work; and

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

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

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

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

37 (A) The claimant made reasonable efforts to preserve the  
38 claimant's employment status by requesting a leave of absence, by  
39 having promptly notified the employer of the reason for the absence,  
40 and by having promptly requested reemployment when again able to

1 assume employment. These alternatives need not be pursued, however,  
2 when they would have been a futile act, including those instances  
3 when the futility of the act was a result of a recognized labor/  
4 management dispatch system; and

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

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

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

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

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

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

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

26 (ix) The claimant left work because of illegal activities in the  
27 claimant's worksite, the claimant reported such activities to the  
28 employer, and the employer failed to end such activities within a  
29 reasonable period of time;

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

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

37 (xii) During a public health emergency:

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



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

4 (C) The claimant or another individual residing with the claimant  
5 is at higher risk of severe illness or death from the disease that is  
6 the subject of the public health emergency because the higher risk  
7 individual:

8 (I) Was in an age category that is defined as high risk for the  
9 disease that is the subject of the public health emergency by the  
10 federal centers for disease control and prevention, the department of  
11 health, or the equivalent agency in the state where the individual  
12 resides; or

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

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

31 (4) Notwithstanding subsection (1) of this section, a claimant  
32 who was simultaneously employed in full-time employment and part-time  
33 employment and is otherwise eligible for benefits from the loss of  
34 the full-time employment shall not be disqualified from benefits  
35 because the claimant:

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

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

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

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

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

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

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

24       (ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through  
25 (x); or

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

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

39       (a) Benefits paid to any individual later determined to be  
40 ineligible shall not be charged to the experience rating account of

1 any contribution paying employer, except as provided in subsection  
2 (4) of this section.

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

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

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

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

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

19 (e) Benefits paid to an individual who qualifies for benefits  
20 under RCW 50.20.050 (1)(b) (iv) or (xi) (~~(e)~~), (2)(b) (iv), (xi), or  
21 (xii), or (3), as applicable, shall not be charged to the experience  
22 rating account of any contribution paying employer.

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

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

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

38 (i)(i) Benefits paid during the one week waiting period when the  
39 one week waiting period is fully paid or fully reimbursed by the

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

3 (ii) In the event the one week waiting period is partially paid  
4 or partially reimbursed by the federal government, the department  
5 may, by rule, elect to not charge, in full or in part, benefits paid  
6 during the one week waiting period to the experience rating account  
7 of any contribution paying employer.

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

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

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

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

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

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

36 (v) Continues to be employed on a regularly scheduled permanent  
37 part-time basis by a base year employer and who qualified for two  
38 consecutive unemployment claims where wages were attributable to at  
39 least one employer who employed the individual in both base years.  
40 Benefit charge relief ceases when the employment relationship between

1 the employer requesting relief and the claimant is terminated. This  
2 subsection does not apply to shared work employers under chapter  
3 50.60 RCW;

4 (vi) Was hired to replace an employee who is a member of the  
5 military reserves or National Guard and was called to federal active  
6 military service by the president of the United States and is  
7 subsequently laid off when that employee is reemployed by their  
8 employer upon release from active duty within the time provided for  
9 reemployment in RCW 73.16.035;

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

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

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

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

37 (5) An employer's experience rating account may not be relieved  
38 of charges for a benefit payment and an employer who reimburses the  
39 trust fund for benefit payments may not be credited for a benefit  
40 payment if a benefit payment was made because the employer or

1 employer's agent failed to respond timely or adequately to a written  
2 request of the department for information relating to the claim or  
3 claims without establishing good cause for the failure and the  
4 employer or employer's agent has a pattern of such failures. The  
5 commissioner has the authority to determine whether the employer has  
6 good cause under this subsection.

7 (a) For the purposes of this subsection, "adequately" means  
8 providing accurate information of sufficient quantity and quality  
9 that would allow a reasonable person to determine eligibility for  
10 benefits.

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

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

18 (B) Twenty percent of the total current claims against the  
19 employer.

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

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

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

37 (1) For health care employees who are covered under this title,  
38 there exists a prima facie presumption that any infectious or

1 contagious diseases which are the subject of a public health  
2 emergency are occupational diseases under RCW 51.08.140 during a  
3 public health emergency.

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

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

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

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

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

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

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

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

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

37 (5) (a) When a determination involving the presumption established  
38 under this section is appealed to the board of industrial insurance  
39 appeals and the final decision allows the claim of benefits, the  
40 board of industrial insurance appeals shall order that all reasonable

1 costs of the appeal, including attorneys' fees and witness fees, be  
2 paid to the worker or the worker's beneficiary by the opposing party.  
3 If the opposing party is a state fund employer or retrospective  
4 rating group, the costs and fees are paid by the employer or  
5 retrospective rating group.

6 (b) When a determination involving the presumption established in  
7 this section is appealed to any court and the final decision allows  
8 the claim for benefits, the court shall order that all reasonable  
9 costs of appeal, including attorneys' fees and witness fees, be paid  
10 to the worker or the worker's beneficiary by the opposing party. If  
11 the opposing party is a state fund employer or retrospective rating  
12 group, the costs and fees are paid by the employer or retrospective  
13 rating group.

14 (c) When reasonable costs of the appeal must be paid by the  
15 department as the opposing party in a state fund case, the costs  
16 shall be paid from the accident fund and charged to the costs of the  
17 claim.

18 (6) Costs of claims allowed under this section shall not affect  
19 the experience rating of employers insured by the state fund. When  
20 calculating assessments due to the department for which total claim  
21 costs are the basis, self-insured employers and self-insurance  
22 hospital groups formed under RCW 51.14.150 and 51.14.160 may deduct  
23 the cost of payments made under this section from the total of all  
24 claim costs reported.

25 (7) For purposes of this section:

26 (a) "Health care employee" means an employee of any health care  
27 facility or other organization that provides emergency or medical  
28 services who has or likely has had direct contact with any person who  
29 has been exposed to or tested positive for any infectious or  
30 contagious diseases which are the subject of a public health  
31 emergency.

32 (b) "Health care facility" has the same meaning as in RCW  
33 9A.50.010.

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

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



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

3 (8) The presumption in subsection (1) of this section takes  
4 effect on the day the national, regional, or state emergency is  
5 declared and continues until this declaration is revoked.

6 (9) The provisions of RCW 51.28.055 concerning time limits for  
7 filing claims for occupational disease apply to claims covered under  
8 this section.

9 **Sec. 7.** RCW 51.52.130 and 2007 c 490 s 4 are each amended to  
10 read as follows:

11 (1) If, on appeal to the superior or appellate court from the  
12 decision and order of the board, said decision and order is reversed  
13 or modified and additional relief is granted to a worker or  
14 beneficiary, or in cases where a party other than the worker or  
15 beneficiary is the appealing party and the worker's or beneficiary's  
16 right to relief is sustained, a reasonable fee for the services of  
17 the worker's or beneficiary's attorney shall be fixed by the court.

18 (a) In fixing the fee the court shall take into consideration the  
19 fee or fees, if any, fixed by the director and the board for such  
20 attorney's services before the department and the board. If the court  
21 finds that the fee fixed by the director or by the board is  
22 inadequate for services performed before the department or board, or  
23 if the director or the board has fixed no fee for such services, then  
24 the court shall fix a fee for the attorney's services before the  
25 department, or the board, as the case may be, in addition to the fee  
26 fixed for the services in the court.

27 (b) If in a worker or beneficiary appeal the decision and order  
28 of the board is reversed or modified and if the accident fund or  
29 medical aid fund is affected by the litigation, or if in an appeal by  
30 the department or employer the worker or beneficiary's right to  
31 relief is sustained, or in an appeal by a worker involving a state  
32 fund employer with twenty-five employees or less, in which the  
33 department does not appear and defend, and the board order in favor  
34 of the employer is sustained, the attorney's fee fixed by the court,  
35 for services before the court only, and the fees of medical and other  
36 witnesses and the costs shall be payable out of the administrative  
37 fund of the department.

38 (c) In the case where the employer or other person or persons  
39 aggrieved by the decision of the board appeal and the worker or

1 beneficiary's right to relief is sustained, the attorneys' fees fixed  
2 by the court, for services before the court only, and the fees of  
3 medical and other witnesses and the costs shall be payable directly  
4 by the person or persons filing the appeal.

5 (d) In the case of self-insured employers, the attorney fees  
6 fixed by the court, for services before the court only, and the fees  
7 of medical and other witnesses and the costs shall be payable  
8 directly by the self-insured employer.

9 (2) In an appeal to the superior or appellate court involving the  
10 presumption established under RCW 51.32.185, the attorney's fee and  
11 costs shall be payable as set forth under RCW 51.32.185.

12 (3) In an appeal to the superior or appellate court involving the  
13 presumption established under section 6 of this act, the attorneys'  
14 fees and costs shall be payable as set forth under section 6 of this  
15 act.

16 NEW SECTION. Sec. 8. A new section is added to chapter 51.32  
17 RCW to read as follows:

18 (1) Where an appealing party, other than the department or a  
19 self-insured employer, is ordered to pay attorneys' fees and costs  
20 and that party fails, refuses, or neglects to comply with the award,  
21 which has become final and is not subject to review or appeal, the  
22 director or any person entitled to compensation under the order may  
23 institute proceedings for injunctive or other appropriate relief for  
24 enforcement of the order. These proceedings may be instituted in the  
25 superior court for the county in which the claimant resides, or, if  
26 the claimant is not then a resident of this state, in the superior  
27 court for the county in which that party may be served with process.

28 (2) The court shall ensure compliance to the order by proper  
29 means, enjoining compliance upon the person obligated to comply with  
30 the compensation order. The court may issue such writs and processes  
31 as are necessary to carry out its orders.

32 (3) A proceeding under this section does not preclude other  
33 methods of enforcement provided for in this title.

34 NEW SECTION. Sec. 9. This act is necessary for the immediate  
35 preservation of the public peace, health, or safety, or support of  
36 the state government and its existing public institutions, and takes  
37 effect immediately."

1 Correct the title.

EFFECT: (1) For purposes of unemployment insurance:

(a) Specifies that health care employee eligibility related to quarantine is for the period of quarantine consistent with recommended guidance or direction from certain entities; and

(b) Applies the misconduct exception related to quarantine and the availability to work provisions specifically to health care workers.

(2) For purposes of the presumption of occupational disease under workers' compensation:

(a) Removes the specification that the health care employee contracted or was exposed to the disease at the health care facility;

(b) Disallows payment of benefits on the date the disease was contracted but waives the standard three-day waiting period;

(c) Provides for deduction of the costs of payments for certain assessments from self-insured employers and self-insurance hospital groups; and

(d) Modifies the definition of "health care employee" from one who have direct contact with certain persons, to having or likely having had such contact.

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