

SSB 5190 - S AMD 129
By Senator Holy

ADOPTED 02/25/2021

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) Entering quarantine because of exposure to or contracting the
19 disease that is the subject of the declaration of the public health
20 emergency.

21 (4) "Gross misconduct" means a criminal act in connection with an
22 individual's work for which the individual has been convicted in a
23 criminal court, or has admitted committing, or conduct connected with
24 the individual's work that demonstrates a flagrant and wanton
25 disregard of and for the rights, title, or interest of the employer
26 or a fellow employee.

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

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

32 (a) The individual has registered for work at, and thereafter has
33 continued to report at, an employment office in accordance with such
34 regulation as the commissioner may prescribe, except that the
35 commissioner may by regulation waive or alter either or both of the
36 requirements of this subdivision as to individuals attached to
37 regular jobs and as to such other types of cases or situations with
38 respect to which the commissioner finds that the compliance with such

1 requirements would be oppressive, or would be inconsistent with the
2 purposes of this title;

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

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

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

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

24 (iii) For the purposes of this subsection, "customary trade
25 practices" includes compliance with an electrical apprenticeship
26 training program that includes a recognized referral system under
27 apprenticeship program standards approved by the Washington state
28 apprenticeship and training council;

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

31 (e) The individual participates in reemployment services if the
32 individual has been referred to reemployment services pursuant to the
33 profiling system established by the commissioner under RCW 50.20.011,
34 unless the commissioner determines that:

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

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

38 (f) As to weeks which fall within an extended benefit period as
39 defined in RCW 50.22.010, the individual meets the terms and

1 conditions of RCW 50.22.020 with respect to benefits claimed in
2 excess of twenty-six times the individual's weekly benefit amount.

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

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

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

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

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

20 (b) The unemployed individual or another individual residing with
21 the unemployed individual is at higher risk of severe illness or
22 death from the disease that is the subject of the public health
23 emergency because the higher risk individual:

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

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

27 (B) The department of health; or

28 (C) The equivalent agency in the state where the individual
29 resides; or

30 (ii) Has an underlying health condition, verified as required by
31 the department by rule, that is identified as a risk factor 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.

37 (5) During the weeks of a public health emergency, an unemployed
38 individual may also meet the requirements of subsection (1) (c) of
39 this section if the unemployed individual described in RCW
40 50.20.050(3) and 50.29.021(1) (c) (iii) is able to perform, available

1 to perform, and actively seeking suitable work which will commence
2 after quarantine or which can be performed for an employer from the
3 individual's home.

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

6 (1) With respect to separations that occur on or after September
7 6, 2009, and for separations that occur before April 4, 2021:

8 (a) A claimant shall be disqualified from benefits beginning with
9 the first day of the calendar week in which the claimant left work
10 voluntarily without good cause and thereafter for seven calendar
11 weeks and until the claimant obtains bona fide work in employment
12 covered by this title and earned wages in that employment equal to
13 seven times the claimant's weekly benefit amount. Good cause reasons
14 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
24 ~~((the))~~ the 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 pursued all reasonable alternatives to preserve
34 the 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

1 when the futility of the act was a result of a recognized labor/
2 management dispatch system; and

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

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

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

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

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

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

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

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

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

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

35 (2) With respect to separations that occur on or after April 4,
36 2021:

37 (a) A claimant shall be disqualified from benefits beginning with
38 the first day of the calendar week in which the claimant has left
39 work voluntarily without good cause and thereafter for seven calendar
40 weeks and until the claimant has obtained bona fide work in

1 employment covered by this title and earned wages in that employment
2 equal to seven times the claimant's weekly benefit amount. Good cause
3 reasons to leave work are limited to reasons listed in (b) of this
4 subsection.

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

9 (i) The duration of the work;

10 (ii) The extent of direction and control by the employer over the
11 work; and

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

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

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

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

22 (A) The claimant made reasonable efforts to preserve the
23 claimant's employment status by requesting a leave of absence, by
24 having promptly notified the employer of the reason for the absence,
25 and by having promptly requested reemployment when again able to
26 assume employment. These alternatives need not be pursued, however,
27 when they would have been a futile act, including those instances
28 when the futility of the act was a result of a recognized labor/
29 management dispatch system; and

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

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

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

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

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

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

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

12 (ix) The claimant left work because of illegal activities in the
13 claimant's worksite, the claimant reported such activities to the
14 employer, and the employer failed to end such activities within a
15 reasonable period of time;

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

18 (xi) The claimant left work to enter an apprenticeship program
19 approved by the Washington state apprenticeship training council.
20 Benefits are payable beginning Sunday of the week prior to the week
21 in which the claimant begins active participation in the
22 apprenticeship program; or

23 (xii) During a public health emergency:

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

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

29 (C) The claimant or another individual residing with the claimant
30 is at higher risk of severe illness or death from the disease that is
31 the subject of the public health emergency because the higher risk
32 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 the
35 federal centers for disease control and prevention, the department of
36 health, or the equivalent agency in the state where the individual
37 resides; or

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

1 federal centers for disease control and prevention, the department of
2 health, or the equivalent agency in the state where the individual
3 resides.

4 (3) With respect to claims that occur on or after July 4, 2021, a
5 claimant has good cause and is not disqualified from benefits under
6 subsection (2)(a) of this section under the following circumstances,
7 in addition to those listed under subsection (2)(b) of this section,
8 if, during a public health emergency, the claimant worked at a health
9 care facility as defined in RCW 9A.50.010, was directly involved in
10 the delivery of health services, and left work due to entering
11 quarantine because of exposure to or contracting the disease that is
12 the subject of the declaration of the public health emergency.

13 (4) Notwithstanding subsection (1) of this section, a claimant
14 who was simultaneously employed in full-time employment and part-time
15 employment and is otherwise eligible for benefits from the loss of
16 the full-time employment shall not be disqualified from benefits
17 because the claimant:

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

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

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

24 (1)(a) An experience rating account shall be established and
25 maintained for each employer, except employers as described in RCW
26 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
27 payments in lieu of contributions, taxable local government employers
28 as described in RCW 50.44.035, and those employers who are required
29 to make payments in lieu of contributions, based on existing records
30 of the employment security department.

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

37 (c) When the eligible individual's separating employer is a
38 covered contribution paying base year employer, benefits paid to the
39 eligible individual shall be charged to the experience rating account

1 of only the individual's separating employer if the individual
2 qualifies for benefits under:

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

6 (ii) RCW 50.20.050 (1)(b)(v) through (x) or (2)(b)(v) through
7 (x); or

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

14 (2) The legislature finds that certain benefit payments, in whole
15 or in part, should not be charged to the experience rating accounts
16 of employers except those employers described in RCW 50.44.010,
17 50.44.030, and 50.50.030 who have properly elected to make payments
18 in lieu of contributions, taxable local government employers
19 described in RCW 50.44.035, and those employers who are required to
20 make payments in lieu of contributions, as follows:

21 (a) Benefits paid to any individual later determined to be
22 ineligible shall not be charged to the experience rating account of
23 any contribution paying employer, except as provided in subsection
24 (4) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (iii) Is unemployed as a result of closure or severe curtailment
5 of operation at the employer's plant, building, worksite, or other
6 facility. This closure must be for reasons directly attributable to a
7 catastrophic occurrence such as fire, flood, or other natural
8 disaster, or to the presence of any dangerous, contagious, or
9 infectious disease that is the subject of a public health emergency
10 at the employer's plant, building, worksite, or other facility;

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

18 (v) Continues to be employed on a regularly scheduled permanent
19 part-time basis by a base year employer and who qualified for two
20 consecutive unemployment claims where wages were attributable to at
21 least one employer who employed the individual in both base years.
22 Benefit charge relief ceases when the employment relationship between
23 the employer requesting relief and the claimant is terminated. This
24 subsection does not apply to shared work employers under chapter
25 50.60 RCW;

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

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

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

1 (b) The employer requesting relief of charges under this
2 subsection must request relief in writing within thirty days
3 following mailing to the last known address of the notification of
4 the valid initial determination of such claim, stating the date and
5 reason for the separation or the circumstances of continued
6 employment. The commissioner, upon investigation of the request,
7 shall determine whether relief should be granted.

8 (4) When a benefit claim becomes invalid due to an amendment or
9 adjustment of a report where the employer failed to report or
10 inaccurately reported hours worked or remuneration paid, or both, all
11 benefits paid will be charged to the experience rating account of the
12 contribution paying employer or employers that originally filed the
13 incomplete or inaccurate report or reports. An employer who
14 reimburses the trust fund for benefits paid to workers and who fails
15 to report or inaccurately reported hours worked or remuneration paid,
16 or both, shall reimburse the trust fund for all benefits paid that
17 are based on the originally filed incomplete or inaccurate report or
18 reports.

19 (5) An employer's experience rating account may not be relieved
20 of charges for a benefit payment and an employer who reimburses the
21 trust fund for benefit payments may not be credited for a benefit
22 payment if a benefit payment was made because the employer or
23 employer's agent failed to respond timely or adequately to a written
24 request of the department for information relating to the claim or
25 claims without establishing good cause for the failure and the
26 employer or employer's agent has a pattern of such failures. The
27 commissioner has the authority to determine whether the employer has
28 good cause under this subsection.

29 (a) For the purposes of this subsection, "adequately" means
30 providing accurate information of sufficient quantity and quality
31 that would allow a reasonable person to determine eligibility for
32 benefits.

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

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

1 (B) Twenty percent of the total current claims against the
2 employer.

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

6 NEW SECTION. **Sec. 5.** If any part of sections 1 through 4 of
7 this act is found to be in conflict with federal requirements that
8 are a prescribed condition to the allocation of federal funds to the
9 state or the eligibility of employers in this state for federal
10 unemployment tax credits, the conflicting part of sections 1 through
11 4 of this act is inoperative solely to the extent of the conflict,
12 and the finding or determination does not affect the operation of the
13 remainder of sections 1 through 4 of this act. Rules adopted under
14 sections 1 through 4 of this act must meet federal requirements that
15 are a necessary condition to the receipt of federal funds by the
16 state or the granting of federal unemployment tax credits to
17 employers in this state.

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

20 (1) For health care employees who are covered under this title,
21 there exists a prima facie presumption that any infectious or
22 contagious diseases which are the subject of a public health
23 emergency are occupational diseases under RCW 51.08.140 during a
24 public health emergency. There is a presumption that the health care
25 employee contracted or was exposed to the disease at the health care
26 facility.

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

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

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

37 (b) The employee was working from the employee's home or other
38 location not under the employer's control, on leave from the

1 employee's employment, or some combination thereof, for the period of
2 quarantine outlined for the disease immediately prior to the
3 employee's date of disease contraction or period of incapacity
4 resulting from exposure to the disease which is the subject of the
5 public health emergency.

6 (4) For health care employees whose claims are allowed under this
7 section, temporary total disability benefits as provided in RCW
8 51.32.090 shall be payable beginning the first day the worker is
9 directed to quarantine or is unable to work due to the exposure or
10 contraction of the disease, whichever comes first. If leave or
11 similar benefits are paid to the worker as part of a federal or state
12 program for these employees during the public health emergency, total
13 temporary disability benefits are not payable for the same period of
14 time covered by this federal or state program.

15 (5) (a) When a determination involving the presumption established
16 under this section is appealed to the board of industrial insurance
17 appeals and the final decision allows the claim of benefits, the
18 board of industrial insurance appeals shall order that all reasonable
19 costs of the appeal, including attorneys' fees and witness fees, be
20 paid to the worker or the worker's beneficiary by the opposing party.
21 If the opposing party is a state fund employer or retrospective
22 rating group, the costs and fees are paid by the employer or
23 retrospective rating group.

24 (b) When a determination involving the presumption established in
25 this section is appealed to any court and the final decision allows
26 the claim for benefits, the court shall order that all reasonable
27 costs of appeal, including attorneys' fees and witness fees, be paid
28 to the worker or the worker's beneficiary by the opposing party. If
29 the opposing party is a state fund employer or retrospective rating
30 group, the costs and fees are paid by the employer or retrospective
31 rating group.

32 (c) When reasonable costs of the appeal must be paid by the
33 department as the opposing party in a state fund case, the costs
34 shall be paid from the accident fund and charged to the costs of the
35 claim.

36 (6) Costs of claims allowed under this section shall not affect
37 the experience rating of employers insured by the state fund.

38 (7) For purposes of this section:

39 (a) "Health care employee" means an employee of any health care
40 facility or other organization that provides emergency or medical

1 services who may have direct contact with any person who has been
2 exposed to or tested positive for any infectious or contagious
3 diseases which are the subject of a public health emergency.

4 (b) "Health care facility" has the same meaning as in RCW
5 9A.50.010.

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

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

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

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

17 (9) The provisions of RCW 51.28.055 concerning time limits for
18 filing claims for occupational disease apply to claims covered under
19 this section.

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

22 (1) If, on appeal to the superior or appellate court from the
23 decision and order of the board, said decision and order is reversed
24 or modified and additional relief is granted to a worker or
25 beneficiary, or in cases where a party other than the worker or
26 beneficiary is the appealing party and the worker's or beneficiary's
27 right to relief is sustained, a reasonable fee for the services of
28 the worker's or beneficiary's attorney shall be fixed by the court.

29 (a) In fixing the fee the court shall take into consideration the
30 fee or fees, if any, fixed by the director and the board for such
31 attorney's services before the department and the board. If the court
32 finds that the fee fixed by the director or by the board is
33 inadequate for services performed before the department or board, or
34 if the director or the board has fixed no fee for such services, then
35 the court shall fix a fee for the attorney's services before the
36 department, or the board, as the case may be, in addition to the fee
37 fixed for the services in the court.

38 (b) If in a worker or beneficiary appeal the decision and order
39 of the board is reversed or modified and if the accident fund or

1 medical aid fund is affected by the litigation, or if in an appeal by
2 the department or employer the worker or beneficiary's right to
3 relief is sustained, or in an appeal by a worker involving a state
4 fund employer with twenty-five employees or less, in which the
5 department does not appear and defend, and the board order in favor
6 of the employer is sustained, the attorney's fee fixed by the court,
7 for services before the court only, and the fees of medical and other
8 witnesses and the costs shall be payable out of the administrative
9 fund of the department.

10 (c) In the case where the employer or other person or persons
11 aggrieved by the decision of the board appeal and the worker or
12 beneficiary's right to relief is sustained, the attorneys' fees fixed
13 by the court, for services before the court only, and the fees of
14 medical and other witnesses and the costs shall be payable directly
15 by the person or persons filing the appeal.

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

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

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

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

29 (1) Where an appealing party, other than the department or a
30 self-insured employer, is ordered to pay attorneys' fees and costs
31 and that party fails, refuses, or neglects to comply with the award,
32 which has become final and is not subject to review or appeal, the
33 director or any person entitled to compensation under the order may
34 institute proceedings for injunctive or other appropriate relief for
35 enforcement of the order. These proceedings may be instituted in the
36 superior court for the county in which the claimant resides, or, if
37 the claimant is not then a resident of this state, in the superior
38 court for the county in which that party may be served with process.

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

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

7 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of
9 the state government and its existing public institutions, and takes
10 effect immediately."

SSB 5190 - S AMD 129
By Senator Holy

ADOPTED 02/25/2021

11 On page 1, line 2 of the title, after "emergency;" strike the
12 remainder of the title and insert "amending RCW 50.04.294, 50.20.010,
13 50.20.050, 50.29.021, and 51.52.130; adding new sections to chapter
14 51.32 RCW; creating a new section; and declaring an emergency."

EFFECT: Amends current engrossed statutes from recently passed
legislation (ESSB 5061), rather than the previous statutes.

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