
SENATE BILL 5115

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By Senators Keiser, Lias, Conway, Kuderer, Lovelett, Nguyen, Salomon, Stanford, and Wilson, C.

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1 AN ACT Relating to establishing health emergency labor standards;
2 amending RCW 49.58.060, 49.58.070, 50A.15.010, 50A.15.020, 49.46.020,
3 and 49.46.210; adding a new section to chapter 51.32 RCW; adding a
4 new section to chapter 49.17 RCW; adding a new section to chapter
5 50A.15 RCW; adding a new section to chapter 82.04 RCW; adding a new
6 section to chapter 82.16 RCW; adding a new chapter to Title 49 RCW;
7 creating new sections; prescribing penalties; and declaring an
8 emergency.

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

10 NEW SECTION. **Sec. 1.** The definitions in this section apply
11 throughout this chapter unless the context clearly requires
12 otherwise.

13 (1) "Assisted living facility" has the same meaning as in RCW
14 18.20.020.

15 (2) "Child care provider" means a provider who receives
16 compensation for providing child care services on a regular basis,
17 including an eligible child care provider as defined in 42 U.S.C.
18 Sec. 9858n, as of the effective date of this section.

19 (3) "Child of the employee" is a child under the age of 18 and
20 includes a biological, adopted, or foster child, a stepchild, a

1 child's spouse, or a child to whom the employee stands in loco
2 parentis, is a legal guardian, or is a de facto parent.

3 (4) "Department" means the department of labor and industries.

4 (5) "Employee" has the same meaning as in RCW 49.46.010.

5 (6) "Employer" means any person, firm, corporation, partnership,
6 business trust, legal representative, or other business entity which
7 engages in any business, industry, profession, or activity in this
8 state and employs 50 or more employees.

9 (7) "Family member" has the same meaning as in RCW 49.46.210.

10 (8) "Farm work" means work performed on a farm, in the employ of
11 any person, in connection with the cultivation of the soil, or in
12 connection with raising or harvesting any agricultural or
13 horticultural commodity, including raising, shearing, feeding, caring
14 for, training, and management of livestock, bees, poultry, and
15 furbearing animals and wildlife, or in the employ of the owner or
16 tenant or other operator of a farm in connection with the operation,
17 management, conservation, improvement, or maintenance of such farm
18 and its tools and equipment. For the purposes of this subsection,
19 "farm work" includes floriculture.

20 (9) "Food distribution work" means work where the primary duties
21 include transporting food from food producers or manufacturers to
22 food warehouses or food service operators and retailers.

23 (10) "Food manufacturing work" means work performed for an
24 employer whose North American industry classification code is within
25 "311."

26 (11) "Food processing work" means work handling or processing of
27 any food in any manner of preparation for sale for an employer
28 required to be licensed by the department of agriculture under
29 chapter 69.07 RCW.

30 (12) "Frontline employee" includes the following employees:

31 (a) First responders, including law enforcement officers,
32 firefighters, emergency medical service providers, paramedics, and
33 ambulance drivers;

34 (b) Employees employed at a hospital, health care facility,
35 nursing home, or assisted living facility who interact in person with
36 patients or other members of the general public as part of their job
37 duties;

38 (c) Employees performing food processing, food manufacturing,
39 food distribution, farm, and meat packing work;

1 (d) Maintenance, janitorial, and food service workers at any
2 facility treating patients diagnosed with the infectious or
3 contagious disease that is the subject of the public health
4 emergency;

5 (e) Drivers and operators employed by a transit agency or any
6 other public entity authorized under state law to provide mass
7 transportation services to the general public;

8 (f) Employees working at a child care facility licensed by the
9 department of children, youth, and families under chapter 43.216 RCW,
10 if the employee has in-person interaction with children or other
11 members of the general public as part of their job duties;

12 (g) Employees employed by a retail store that remains open to the
13 general public during the public health emergency, if the employee
14 has in-person interaction with the general public as part of their
15 job duties or has in-person interaction with other employees. For the
16 purposes of this subsection, "retail store" means a business whose
17 North American industry classification code is within "44-45;"

18 (h) Employees employed by a hotel, motel, or other transient
19 accommodation licensed under chapter 70.62 RCW that remains open to
20 the general public during the public health emergency, if the
21 employee has in-person interaction with the general public as part of
22 their job duties or has in-person interaction with other employees;

23 (i) Employees employed by a restaurant, if the employee has in-
24 person interaction with the general public as part of their job
25 duties or works in the kitchen of the restaurant and has in-person
26 interaction with other employees. For the purposes of this
27 subsection, "restaurant" has the same meaning as in RCW 66.04.010;

28 (j) Home care aides certified under chapter 18.88B RCW and home
29 health aides that provide services under chapter 70.126 RCW that
30 primarily work in the home of the individual receiving care;

31 (k)(i) Corrections officers and correctional support employees
32 working at a correctional institution.

33 (ii) For the purposes of this subsection (12)(k):

34 (A) "Correctional institution" has the same meaning as in RCW
35 9.94.049.

36 (B) "Corrections officer" means any corrections agency employee
37 whose primary job function is to provide custody, safety, and
38 security of prisoners in jails and detention facilities.

1 (C) "Correctional support employee" means any employee who
2 provides food services or janitorial services in a correctional
3 institution;

4 (l) Educational employees, including classroom teachers,
5 paraeducators, principals, librarians, and other educational support
6 staff, of any school district that are required to be physically
7 present at a school where classes are being taught in person, if the
8 employee has in-person interaction with students or other employees
9 as part of their job duties;

10 (m) Employees of institutions of higher education that are
11 required to be physically present on campus when classes are being
12 taught in person, if the employee has in-person interaction with
13 students or the general public as part of their job duties. For the
14 purposes of this subsection, "institution of higher education" has
15 the same meaning as in RCW 28B.10.016;

16 (13) "Health care facility" has the same meaning as in RCW
17 9A.50.010.

18 (14) "Health emergency pay" means an additional sum equal to 25
19 percent of the state's minimum wage, as established under RCW
20 49.46.020, that is added to the employee's pay for each hour worked.

21 (15) "Lower paid frontline employees" means those employees who
22 earn less than the state's minimum wage, plus one dollar, and who are
23 frontline employees.

24 (16) "Meat packing work" means work slaughtering animals and
25 processing and packaging meat products for sale and the rendering of
26 animal by-products.

27 (17) "Nursing home" means a nursing home licensed under chapter
28 18.51 RCW.

29 (18) "Public health emergency" means a declaration or order that
30 covers the jurisdiction where the individual or business performs
31 work concerning any infectious or contagious diseases, including a
32 pandemic and is issued as follows:

33 (a) The president of the United States has declared a national or
34 regional emergency; or

35 (b) The governor of Washington has declared a state of emergency
36 under RCW 43.06.010(12).

37 (19) "School" has the same meaning as in RCW 28A.210.070.

38 (20) "State minimum wage" means the most recent minimum wage in
39 effect pursuant to RCW 49.46.020.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.32

2 RCW to read as follows:

3 (1) For frontline employees who are covered under this title,
4 there exists a prima facie presumption that any infectious or
5 contagious diseases which are the subject of a public health
6 emergency are occupational diseases under RCW 51.08.140 during a
7 public health emergency.

8 (2) The frontline employee must provide verification, as required
9 by the department by rule, to the department and the self-insured
10 employer that the employee has contracted the infectious or
11 contagious disease that is the subject of the public health
12 emergency.

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

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

18 (b) The employee was working from the employee's home, on leave
19 from the employee's employment, or some combination thereof, for a
20 period of 14 or more consecutive days immediately prior to the
21 employee's injury, occupational disease, or period of incapacity
22 resulted from exposure to the disease which is the subject of the
23 public health emergency.

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

29 (a) The date that the worker first missed work due to symptoms of
30 the infectious or contagious disease;

31 (b) The date the worker was quarantined by a medical provider or
32 public health official; or

33 (c) The date the worker received a positive test result
34 confirming contraction of the infectious or contagious disease.

35 (5) (a) When a determination involving the presumption established
36 in this section is appealed to the board of industrial insurance
37 appeals and the final decision allows the claim of benefits, the
38 board of industrial insurance appeals shall order that all reasonable
39 costs of the appeal, including attorneys' fees and witness fees, be
40 paid to the worker or the worker's beneficiary by the opposing party.

1 If the opposing party is a state fund employer, the costs and fees
2 are paid by the employer.

3 (b) When a determination involving the presumption established in
4 this section is appealed to any court and the final decision allows
5 the claim for benefits, the court shall order that all reasonable
6 costs of appeal, including attorneys' fees and witness fees, be paid
7 to the worker or the worker's beneficiary by the opposing party.

8 (c) When reasonable costs of the appeal must be paid by the
9 department under this section in a state fund case, the costs shall
10 be paid from the accident fund and charged to the costs of the claim.

11 (6) Costs of the payments under this section shall not affect the
12 experience rating of employers insured by the state fund. These costs
13 shall be paid from the accident fund.

14 (7) As used in this section:

15 (a) "Frontline employee" has the same meaning as in section 1 of
16 this act.

17 (b) "Public health emergency" has the same meaning as in section
18 1 of this act.

19 NEW SECTION. **Sec. 3.** (1) During a public health emergency, if
20 an employer requires its employees or contractors to wear personal
21 protective equipment, such as gloves, goggles, face shields, or face
22 masks, the employer must provide the required equipment at no cost to
23 the employees.

24 (2) Every employer that does not have a requirement for its
25 employees and contractors to wear personal protective equipment
26 subject to subsection (1) of this section, must accommodate its
27 employee's or contractor's voluntary use of protective devices or
28 equipment, including gloves, goggles, face shields, and face masks,
29 as the employee or contractor deems necessary, during a public health
30 emergency, as long as:

31 (a) The use of these protective devices and equipment does not
32 introduce hazards to the work environment and is consistent with the
33 provisions of chapter 49.17 RCW and corresponding rules established
34 by the department, as of the effective date of this section; and

35 (b) The use of facial coverings does not interfere with an
36 employer's security requirements.

37 (3) An employer may not apply to the director of the department,
38 under RCW 49.17.080, for a temporary order granting a variance from
39 this section.

1 (4) For the purposes of this section, "public health emergency"
2 has the same meaning as in section 1 of this act.

3 NEW SECTION. **Sec. 4.** During a public health emergency, no
4 person shall discharge or in any manner discriminate against any
5 employee who:

6 (1) Raises a reasonable concern to the employer, the employer's
7 agent, other employees, the employee's family, a government agency,
8 or the public, including concerns raised through print, online,
9 social, or any other media about infection control in the workplace
10 of any disease that is the subject of the public health emergency; or

11 (2) Files any written notice or institutes or causes to be
12 instituted any proceeding pursuant to section 7 of this act or has
13 testified or is about to testify in any such proceeding.

14 **Sec. 5.** RCW 49.58.060 and 2018 c 116 s 7 are each amended to
15 read as follows:

16 (1) Upon complaint by an employee, the director must investigate
17 to determine if there has been compliance with RCW 49.58.020,
18 49.58.040, (~~and~~) 49.58.050, section 4 of this act, and the rules
19 adopted under this chapter. The director, upon complaint, may also
20 initiate an investigation on behalf of one or more employees for a
21 violation of RCW 49.58.020, 49.58.040, (~~and~~) 49.58.050, section 4
22 of this act, and the rules adopted under this chapter. The director
23 may require the testimony of witnesses and production of documents as
24 part of an investigation.

25 (2) If the director determines that a violation occurred, the
26 director shall attempt to resolve the violation by conference and
27 conciliation.

28 (a) If no agreement is reached to resolve the violation, the
29 director may issue a citation and notice of assessment and order the
30 employer to pay to the complainant actual damages; statutory damages
31 equal to the actual damages or five thousand dollars, whichever is
32 greater; interest of one percent per month on all compensation owed;
33 payment to the department of the costs of investigation and
34 enforcement; and any other appropriate relief.

35 (b) In addition to the citation and notice of assessment, the
36 director may order payment to the department of a civil penalty. For
37 purposes of a civil penalty for violation of RCW 49.58.020 and

1 49.58.050, the violation as to each affected employee constitutes a
2 separate violation.

3 (i) For a first violation, the civil penalty may not exceed five
4 hundred dollars.

5 (ii) For a repeat violation, the civil penalty may not exceed one
6 thousand dollars or ten percent of the damages, whichever is greater.

7 (3) An appeal from the director's determination may be taken in
8 accordance with chapter 34.05 RCW. An employee who prevails is
9 entitled to costs and reasonable attorneys' fees.

10 (4) The department must deposit civil penalties paid under this
11 section in the supplemental pension fund established under RCW
12 51.44.033.

13 (5) Any wages and interest owed must be calculated from four
14 years from the last violation before the complaint.

15 **Sec. 6.** RCW 49.58.070 and 2018 c 116 s 8 are each amended to
16 read as follows:

17 (1) Subject to subsection (2) of this section, an employee may
18 bring a civil action against an employer for violation of RCW
19 49.58.020 (~~and~~), 49.58.030 through 49.58.050, and section 4 of this
20 act for actual damages; statutory damages equal to the actual damages
21 or five thousand dollars, whichever is greater; interest of one
22 percent per month on all compensation owed; and costs and reasonable
23 attorneys' fees. The court may also order reinstatement and
24 injunctive relief. The employee must bring a civil action within
25 three years of the date of the alleged violation of this chapter
26 regardless of whether the employee pursued an administrative
27 complaint. Filing a civil action under this chapter shall terminate
28 the director's processing of the complaint under RCW 49.58.030 or
29 49.58.060. Recovery of any wages and interest owed must be calculated
30 from four years from the last violation prior to the date of filing
31 the civil action.

32 (2) An employee alleging a violation of RCW 49.58.030 is entitled
33 to relief only if the court determines that the employer committed a
34 pattern of violations as to the employee or committed a violation
35 through application of a formal or informal employer policy or
36 practice.

37 NEW SECTION. **Sec. 7.** (1)(a) A relator, on behalf of the
38 department, and in the name of the department, may bring a

1 whistleblower action in court for violations of section 4 of this
2 act, including equitable relief, penalties, and any relief specified
3 in rule. The granting of relief shall be subject to the same
4 conditions and limitations that apply to the department, including
5 any requirements for conference and conciliation and any conditions
6 and limitations specified in rule, including penalty amounts. The
7 action may allege multiple violations that have affected different
8 employees aggrieved by the same employer. The relator must follow the
9 procedures specified in subsection (2) of this section.

10 (b) A relator that prevails in a whistleblower action is entitled
11 to an award of reasonable attorneys' fees and costs.

12 (c) No whistleblower action may be brought if the department,
13 regarding the same facts as alleged in the whistleblower action,
14 issued a citation or notice of assessment, or otherwise resolved the
15 complaint.

16 (d) A whistleblower action must be commenced within the same
17 period of time that the department would have to take action based on
18 the same set of alleged facts. The statute of limitations for
19 bringing a whistleblower action is tolled from the date a relator
20 files a notice with the department or the date the department
21 commences an investigation.

22 (e) The requirements of Rule 23 of the superior court rules of
23 civil procedure do not apply to a whistleblower action brought under
24 this section.

25 (f) The right to bring a whistleblower action under this section
26 may not be impaired by any private agreement.

27 (g) A whistleblower action is a public action and does not
28 preclude a cause of action by an individual or individuals or operate
29 as an estoppel for relief based on the same set of alleged facts,
30 except that a court may not permit a double recovery.

31 (h) An employee of the entity alleged to have violated section 4
32 of this act may designate in writing a representative organization to
33 initiate a whistleblower action on the person's behalf.

34 (2)(a) No action under subsection (1) of this section may be
35 commenced before written notice of the claim has been submitted by
36 the relator to the department via online submission and the relator
37 has notified the employer by certified mail. The notice must be
38 construed in the light most favorable to the relator, and must
39 include the name, address, and contact information of the alleged
40 violator; the name and contact information of the relator or the

1 relator's legal counsel, should one exist; and a brief statement of
2 the underlying claim.

3 (b) Within 30 days of receiving the notification under subsection
4 (1) of this section from the relator, the department must notify the
5 relator of its intent to investigate or not investigate the alleged
6 violation. If the department intends to investigate the alleged
7 violation, it must make a determination within 90 days of receiving
8 the notice under subsection (1) of this section. Upon receiving
9 notice that the department does not intend to investigate, or if the
10 department does not make a determination within 90 days, the relator
11 may commence a whistleblower action.

12 (c) If the department objects to being represented by a
13 particular attorney proposed by the relator, the department may file
14 an objection to the attorney general. Upon finding, after notice and
15 hearing, that, based on the attorney's past conduct while
16 representing a client or clients, the attorney does not meet the
17 required professional standards of representatives, or,
18 alternatively, if the attorney fails to zealously pursue the remedies
19 available under this chapter, the attorney general may, within 30
20 days of receiving the objection, order that the whistleblower action
21 may not be filed or maintained by the particular attorney on behalf
22 of the relator.

23 (3)(a) The department may intervene in a whistleblower action and
24 proceed with any and all claims in the action:

25 (i) As of right within 30 days after the filing of the
26 whistleblower action;

27 (ii) For good cause shown, as determined by the court, after the
28 expiration of the 30-day period.

29 (b) If the department intervenes in a whistleblower action, the
30 department shall have primary responsibility for litigating the
31 action and shall not be bound by an act of the relator in bringing
32 the action. If the department proposes to settle a whistleblower
33 action, the department must give notice to the relator. If the
34 department proposes to dismiss a whistleblower action, it must give
35 notice to the relator and the relator must have an opportunity to be
36 heard. The department may dismiss or settle the action if the court
37 determines that the dismissal or settlement is fair, adequate,
38 reasonable, and in the public interest.

39 (c) If the department does not intervene, the relator shall have
40 the right to litigate the action. The court must review and approve

1 any settlement. The proposed settlement must be submitted to the
2 department at the same time that it is submitted to the court, and
3 the agency may present to the court its position on the proposed
4 settlement or intervene as provided in (a) of this subsection. The
5 court shall approve a settlement only upon a determination that it is
6 fair, adequate, reasonable, and in the public interest.

7 (d) Any settlement of a whistleblower action may not be
8 confidential.

9 (4)(a) Penalty amounts recovered in a whistleblower action must
10 be distributed as follows:

11 (i) If the department has not intervened, 40 percent to the
12 relator and 60 percent to the agency;

13 (ii) If the department has intervened, 20 percent to the relator
14 and 80 percent to the agency.

15 (b) Amounts distributed to the department shall be used for
16 enforcement of chapter 49.17 RCW and education about the rights and
17 obligations enforceable through this section by the agency.

18 (c) Damages recovered in a whistleblower action must be awarded
19 to the department for distribution to aggrieved employees. The
20 department may request the appointment of an administrative law judge
21 or special master to assist in the distribution of the amounts.

22 (5) This section does not limit the department's right to seek
23 restitution and damages, where available, for aggrieved employees as
24 part of a whistleblower action in which it has intervened.

25 (6) For the purposes of this section, the following definitions
26 apply:

27 (a) "Person" means any natural person, partnership, corporation,
28 association, or other legal entity, including any local or political
29 subdivision of the state.

30 (b) "Relator" means a person who brings or seeks to bring an
31 action under this section related to a violation of section 4 of this
32 act.

33 NEW SECTION. **Sec. 8.** A new section is added to chapter 49.17
34 RCW to read as follows:

35 (1) During a public health emergency:

36 (a) An employer with more than 50 employees at a workplace or
37 worksite, within 24 hours of learning that five percent or more of
38 their employees at the workplace or worksite in this state have
39 tested positive for the infectious or contagious disease that is the

1 subject of the public health emergency, or have symptoms of the
2 infectious or contagious disease that is the subject of the public
3 health emergency, must report the positive tests or symptomatic
4 workers to the department in a form prescribed by the department.

5 (b) An employer with 50 or fewer employees at a workplace or
6 worksite, within 24 hours of learning that 10 percent or more of
7 their employees at the workplace or worksite in this state have
8 tested positive for the infectious or contagious disease that is the
9 subject of the public health emergency, or have symptoms of the
10 infectious or contagious disease that is the subject of the public
11 health emergency, must report the positive tests or symptomatic
12 workers to the department in a form prescribed by the department.

13 (c) The reports required in (a) and (b) of this subsection may
14 not include any employee names or personal identifying information.

15 (2) The department may use the reports in subsection (1) of this
16 section to identify potential clusters of infections at specific
17 workplaces or industries and investigate workplaces for violations of
18 chapter 49.17 RCW.

19 (3) This section does not require an employee to disclose any
20 medical condition or diagnosis to their employer.

21 (4) This section does not alter or eliminate any other reporting
22 obligations an employer has under state or federal law.

23 **Sec. 9.** RCW 50A.15.010 and 2019 c 13 s 2 are each amended to
24 read as follows:

25 Employees are eligible for family and medical leave benefits as
26 provided in this title after working for at least (~~eight hundred~~
27 ~~twenty~~) 820 hours in employment during the qualifying period, except
28 an employee is eligible for benefits after they have earned at least
29 \$1,000 in covered employment if their qualifying period includes a
30 public health emergency as defined in section 1 of this act.

31 **Sec. 10.** RCW 50A.15.020 and 2020 c 125 s 4 are each amended to
32 read as follows:

33 (1) (~~Beginning January 1, 2020, family~~) Family and medical
34 leave are available and benefits are payable to a qualified employee
35 under this section.

36 (a) Following a waiting period consisting of the first seven
37 consecutive calendar days, benefits are payable when family or
38 medical leave is required. However, no waiting period is required for

1 leave for the birth or placement of a child, or for leave because of
2 any qualifying exigency as defined under RCW 50A.05.010(10)(c). The
3 waiting period begins the previous Sunday of the week when an
4 otherwise eligible employee takes leave for the minimum claim
5 duration under subsection (2)(c) of this section. Eligible employees
6 may satisfy the waiting period requirement while simultaneously
7 receiving paid time off for any part of the waiting period.

8 (b) Benefits may continue during the continuance of the need for
9 family or medical leave, subject to the maximum and minimum weekly
10 benefits, duration, and other conditions and limitations established
11 in this title.

12 (2) The weekly benefit shall be prorated by the percentage of
13 hours on leave compared to the number of hours provided as the
14 typical workweek hours as defined in RCW 50A.05.010.

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

17 (b) Hours on leave claimed for benefits under this title, if not
18 a multiple of one hour, shall be reduced to the next lower multiple
19 of one hour.

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

22 (3)(a) The maximum duration of paid family leave may not exceed
23 ~~((twelve))~~ 12 times the typical workweek hours during a period of
24 ~~((fifty-two))~~ 52 consecutive calendar weeks.

25 (b) The maximum duration of paid medical leave may not exceed
26 ~~((twelve))~~ 12 times the typical workweek hours during a period of
27 ~~((fifty-two))~~ 52 consecutive calendar weeks. This leave may be
28 extended an additional two times the typical workweek hours if the
29 employee experiences a serious health condition with a pregnancy that
30 results in incapacity.

31 (c) An employee is not entitled to paid family and medical leave
32 benefits under this title that exceeds a combined total of
33 ~~((sixteen))~~ 16 times the typical workweek hours. The combined total
34 of family and medical leave may be extended to ~~((eighteen))~~ 18 times
35 the typical workweek hours if the employee experiences a serious
36 health condition with a pregnancy that results in incapacity.

37 (4) The weekly benefit for family and medical leave shall be
38 determined as follows: If the employee's average weekly wage is: (a)
39 Equal to or less than one-half of the state average weekly wage, then
40 the benefit amount is equal to ~~((ninety))~~ 90 percent of the

1 employee's average weekly wage; or (b) greater than one-half of the
2 state average weekly wage, then the benefit amount is the sum of: (i)
3 (~~Ninety~~) 90 percent of one-half of the state average weekly wage;
4 and (ii) (~~fifty~~) 50 percent of the difference of the employee's
5 average weekly wage and one-half of the state average weekly wage.

6 (5) (a) The maximum weekly benefit for family and medical leave
7 that occurs on or after January 1, 2020, shall be (~~one thousand~~
8 ~~dollars~~) \$1,000. By September 30, 2020, and by each subsequent
9 September 30th, the commissioner shall adjust the maximum weekly
10 benefit amount to (~~ninety~~) 90 percent of the state average weekly
11 wage. The adjusted maximum weekly benefit amount takes effect on the
12 following January 1st.

13 (b) The minimum weekly benefit shall not be less than (~~one~~
14 ~~hundred dollars~~) \$100 per week except that if the employee's average
15 weekly wage at the time of family or medical leave is less than (~~one~~
16 ~~hundred dollars~~) \$100 per week, the weekly benefit shall be the
17 employee's full wage.

18 NEW SECTION. Sec. 11. A new section is added to chapter 50A.15
19 RCW to read as follows:

20 The department may adopt rules to implement the provisions of RCW
21 50A.15.010.

22 NEW SECTION. Sec. 12. (1) In addition to the requirements of
23 RCW 49.46.020, every employer shall provide its lower paid frontline
24 employees with health emergency pay during a public health emergency.
25 The health emergency pay is not required for hours of work performed
26 when the employee is earning overtime pay as required by RCW
27 49.46.130.

28 (2) The department may enforce the requirements of this section
29 under the provisions of chapter 49.48 RCW and may treat the
30 requirements as a "wage payment requirement" as provided in RCW
31 49.48.082.

32 **Sec. 13.** RCW 49.46.020 and 2019 c 236 s 2 are each amended to
33 read as follows:

34 (1) (~~(a) Beginning January 1, 2017, and until January 1, 2018,~~
35 ~~every employer shall pay to each of his or her employees who has~~
36 ~~reached the age of eighteen years wages at a rate of not less than~~
37 ~~eleven dollars per hour.~~

1 ~~(b) Beginning January 1, 2018, and until January 1, 2019, every~~
2 ~~employer shall pay to each of his or her employees who has reached~~
3 ~~the age of eighteen years wages at a rate of not less than eleven~~
4 ~~dollars and fifty cents per hour.~~

5 ~~(c) Beginning January 1, 2019, and until January 1, 2020, every~~
6 ~~employer shall pay to each of his or her employees who has reached~~
7 ~~the age of eighteen years wages at a rate of not less than twelve~~
8 ~~dollars per hour.~~

9 ~~(d) Beginning January 1, 2020, and until January 1, 2021, every~~
10 ~~employer shall pay to each of his or her employees who has reached~~
11 ~~the age of eighteen years wages at a rate of not less than thirteen~~
12 ~~dollars and fifty cents per hour.~~

13 ~~(2))~~ (a) Beginning on January 1, 2021, and each following January
14 1st as set forth under (b) of this subsection, every employer shall
15 pay to each of his or her employees who has reached the age of
16 ~~((eighteen))~~ 18 years wages at a rate of not less than the amount
17 established under (b) of this subsection.

18 (b) On September 30, 2020, and on each following September 30th,
19 the department of labor and industries shall calculate an adjusted
20 minimum wage rate to maintain employee purchasing power by increasing
21 the current year's minimum wage rate by the rate of inflation. The
22 adjusted minimum wage rate shall be calculated to the nearest cent
23 using the consumer price index for urban wage earners and clerical
24 workers, CPI-W, or a successor index, for the ~~((twelve))~~ 12 months
25 prior to each September 1st as calculated by the United States
26 department of labor. Each adjusted minimum wage rate calculated under
27 this subsection ~~((2))~~ (1) (b) takes effect on the following January
28 1st.

29 ~~((3))~~ (2) An employer must pay to its employees: (a) All tips
30 and gratuities; and (b) all service charges as defined under RCW
31 49.46.160 except those that, pursuant to RCW 49.46.160, are itemized
32 as not being payable to the employee or employees servicing the
33 customer. Tips and service charges paid to an employee are in
34 addition to, and may not count towards, the employee's hourly minimum
35 wage.

36 ~~((4) Beginning January 1, 2018, except))~~ (3) Except as provided
37 in RCW 49.46.180, every employer must provide to each of its
38 employees paid sick leave as provided in RCW 49.46.200 and 49.46.210.

39 ~~((5))~~ (4) The director shall by regulation establish the
40 minimum wage for employees under the age of ~~((eighteen))~~ 18 years.

1 NEW SECTION. **Sec. 14.** (1) In addition to the requirements of
2 RCW 49.46.210, every employer shall provide each of its employees
3 paid sick leave on an annual basis, in the amounts specified in
4 subsection (2) of this section, during a public health emergency
5 when:

6 (a) The employee is absent or unable to work or telework due to a
7 need for leave because:

8 (i) The employee is subject to a federal, state, or local
9 quarantine or isolation order related to the infectious or contagious
10 disease;

11 (ii) The employee has been advised by a health care provider to
12 self-quarantine due to concerns related to the infectious or
13 contagious disease; or

14 (iii) The employee is experiencing symptoms of the infectious or
15 contagious disease and seeking a medical diagnosis;

16 (b) The employee is caring for a family member who is subject to
17 an order as described in (a)(i) of this subsection or has been
18 advised as described in (a)(ii) of this subsection;

19 (c) The employee is caring for a child of the employee if the
20 child's school or place of care has been closed, or the child's child
21 care provider is unavailable, due to a public health emergency; or

22 (d) The employee is experiencing any other substantially similar
23 condition specified by the secretary of the United States department
24 of health and human services in consultation with the secretary of
25 the United States department of treasury and the secretary of the
26 United States department of labor, or the Washington state department
27 of health.

28 (2) The amount of hours of paid sick time to which an employee is
29 entitled to under this section is:

30 (a) For full-time employees, 80 hours;

31 (b) For part-time employees, a number of hours equal to the
32 number of hours that such employee works, on average, over a two-week
33 period.

34 (3) Paid sick time under this section shall not carry over to a
35 subsequent year.

36 (4) An employee is entitled to use the paid sick leave provided
37 in this section with no restriction on the length of their
38 employment.

39 (5) Employers are not prevented from providing more generous paid
40 sick leave policies than provided in this section.

1 (6) This section does not require an employer to provide
2 financial or other reimbursement for accrued and unused paid sick
3 leave to any employee upon the employee's termination, resignation,
4 retirement, or other separation from employment.

5 (7) The provisions of RCW 49.46.210(1) (f), (g), (h), and (i)
6 apply equally to the paid sick leave under this section.

7 (8) The department may enforce the provisions of this section
8 under chapter 49.46 RCW and corresponding rules established by the
9 department.

10 **Sec. 15.** RCW 49.46.210 and 2019 c 236 s 3 are each amended to
11 read as follows:

12 (1) (~~Beginning January 1, 2018, except~~) Except as provided in
13 RCW 49.46.180, every employer shall provide each of its employees
14 paid sick leave as follows:

15 (a) An employee shall accrue at least one hour of paid sick leave
16 for every (~~forty~~) 40 hours worked as an employee. An employer may
17 provide paid sick leave in advance of accrual provided that such
18 front-loading meets or exceeds the requirements of this section for
19 accrual, use, and carryover of paid sick leave.

20 (b) An employee is authorized to use paid sick leave for the
21 following reasons:

22 (i) An absence resulting from an employee's mental or physical
23 illness, injury, or health condition; to accommodate the employee's
24 need for medical diagnosis, care, or treatment of a mental or
25 physical illness, injury, or health condition; or an employee's need
26 for preventive medical care;

27 (ii) To allow the employee to provide care for a family member
28 with a mental or physical illness, injury, or health condition; care
29 of a family member who needs medical diagnosis, care, or treatment of
30 a mental or physical illness, injury, or health condition; or care
31 for a family member who needs preventive medical care; and

32 (iii) When the employee's place of business has been closed by
33 order of a public official for any health-related reason, or when an
34 employee's child's school or place of care has been closed for such a
35 reason.

36 (c) An employee is authorized to use paid sick leave for absences
37 that qualify for leave under the domestic violence leave act, chapter
38 49.76 RCW.

1 (d) An employee is entitled to use accrued paid sick leave
2 beginning on the (~~ninetieth~~) 90th calendar day after the
3 commencement of his or her employment.

4 (e) Employers are not prevented from providing more generous paid
5 sick leave policies or permitting use of paid sick leave for
6 additional purposes.

7 (f) An employer may require employees to give reasonable notice
8 of an absence from work, so long as such notice does not interfere
9 with an employee's lawful use of paid sick leave.

10 (g) For absences exceeding three days, an employer may require
11 verification that an employee's use of paid sick leave is for an
12 authorized purpose. If an employer requires verification,
13 verification must be provided to the employer within a reasonable
14 time period during or after the leave. An employer's requirements for
15 verification may not result in an unreasonable burden or expense on
16 the employee and may not exceed privacy or verification requirements
17 otherwise established by law.

18 (h) An employer may not require, as a condition of an employee
19 taking paid sick leave, that the employee search for or find a
20 replacement worker to cover the hours during which the employee is on
21 paid sick leave.

22 (i) For each hour of paid sick leave used, an employee shall be
23 paid the greater of the minimum hourly wage rate established in this
24 chapter or his or her normal hourly compensation. The employer is
25 responsible for providing regular notification to employees about the
26 amount of paid sick leave available to the employee.

27 (j) Unused paid sick leave carries over to the following year,
28 except that an employer is not required to allow an employee to carry
29 over paid sick leave in excess of (~~forty~~) 40 hours.

30 (k) This section does not require an employer to provide
31 financial or other reimbursement for accrued and unused paid sick
32 leave to any employee upon the employee's termination, resignation,
33 retirement, or other separation from employment. When there is a
34 separation from employment and the employee is rehired within
35 (~~twelve~~) 12 months of separation by the same employer, whether at
36 the same or a different business location of the employer, previously
37 accrued unused paid sick leave shall be reinstated and the previous
38 period of employment shall be counted for purposes of determining the
39 employee's eligibility to use paid sick leave under subsection (1)(d)
40 of this section.

1 (2) For purposes of this section, "family member" means any of
2 the following:

3 (a) A child, including a biological, adopted, or foster child,
4 stepchild, or a child to whom the employee stands in loco parentis,
5 is a legal guardian, or is a de facto parent, regardless of age or
6 dependency status;

7 (b) A biological, adoptive, de facto, or foster parent,
8 stepparent, or legal guardian of an employee or the employee's spouse
9 or registered domestic partner, or a person who stood in loco
10 parentis when the employee was a minor child;

11 (c) A spouse;

12 (d) A registered domestic partner;

13 (e) A grandparent;

14 (f) A grandchild; or

15 (g) A sibling.

16 (3) An employer may not adopt or enforce any policy that counts
17 the use of paid sick leave time as an absence that may lead to or
18 result in discipline against the employee.

19 (4) An employer may not discriminate or retaliate against an
20 employee for his or her exercise of any rights under this chapter
21 including the use of paid sick leave.

22 NEW SECTION. **Sec. 16.** (1) In addition to the requirements of
23 RCW 49.46.210 and section 14 of this act, every employer, with 50 or
24 more employees, shall provide each of its employees 12 weeks of
25 emergency child care leave on an annual basis, in the amounts
26 specified in subsection (2) of this section, during a public health
27 emergency when the employee is absent or unable to work or telework
28 when the employee is caring for a child of the employee because the
29 child's school or place of care has been closed, or the child's child
30 care provider is unavailable, due to a public health emergency. For
31 the purposes of this section, a school is closed when the school does
32 not allow the child to physically attend class in person for the full
33 day.

34 (2) (a) The first 10 days of leave taken under this section shall
35 be unpaid leave; however, the employee may substitute any paid time
36 off offered by an employer under the employer's established policy.

37 (b) For each hour of emergency child care leave that is paid
38 leave under this section, an employee shall be paid at least two-

1 thirds of the employee's normal hourly compensation or salary, not to
2 exceed \$200 per day or an aggregate of \$10,000 annually.

3 (3) Emergency child care leave under this section shall not carry
4 over to a subsequent year.

5 (4) An employee is entitled to use the emergency child care leave
6 provided in this section after 90 days of employment with the
7 employer, with no restriction on the minimum number of hours worked.

8 (5) Employers are not prevented from providing more generous paid
9 leave policies than provided in this section.

10 (6) This section does not require an employer to provide
11 financial or other reimbursement for accrued and unused emergency
12 child care leave to any employee upon the employee's termination,
13 resignation, retirement, or other separation from employment.

14 (7)(a) An employer may require employees to give reasonable
15 notice of an absence from work, so long as such notice does not
16 interfere with an employee's lawful use of emergency child care
17 leave.

18 (b) For absences exceeding three days, an employer may require
19 verification that an employee's use of emergency child care leave is
20 for an authorized purpose. If an employer requires verification,
21 verification must be provided to the employer within a reasonable
22 time period during or after the leave. An employer's requirements for
23 verification may not result in an unreasonable burden or expense on
24 the employee and may not exceed privacy or verification requirements
25 otherwise established by law.

26 (c) An employer may not require, as a condition of an employee
27 taking emergency child care leave, that the employee search for or
28 find a replacement worker to cover the hours during which the
29 employee is on paid leave.

30 (d) The employer is responsible for providing regular
31 notification to employees about the amount of emergency child care
32 leave available to the employee.

33 (8) An employer may not adopt or enforce any policy that counts
34 the use of emergency child care leave time as an absence that may
35 lead to or result in discipline against the employee.

36 (9) An employer may not discriminate or retaliate against an
37 employee for the employee's exercise of any rights under this
38 chapter, including the use of emergency child care leave.

1 (10) The department may enforce the provisions of this section
2 under the provisions of chapter 49.46 RCW and the corresponding rules
3 established by the department.

4 NEW SECTION. **Sec. 17.** A new section is added to chapter 82.04
5 RCW to read as follows:

6 (1) Beginning July 1, 2021, a credit against the tax due under
7 this chapter is allowed for any employer who meets the public health
8 emergency paid sick or child care leave requirements under sections
9 14 and 16 of this act. The credit is equal to the full amount of
10 wages paid by the employer in qualifying public health emergency paid
11 sick or child care leave in the previous calendar quarter as reported
12 to the employment security department and provided in this section.

13 (2) A credit under this section may not be claimed if a federal
14 tax credit is available for wages paid under the same qualifying
15 public health emergency.

16 (3) The credit under this section may be used against any tax due
17 under this chapter and may be carried forward to future reporting
18 periods for a maximum of one year. No refunds may be granted for
19 credits under this section.

20 (4) Credits earned under this section may be claimed only on
21 returns filed electronically with the department using the
22 department's online tax filing service or other method of electronic
23 reporting as the department may authorize. No application is required
24 to claim the credit, but the taxpayer must keep records necessary for
25 the department to determine eligibility under this section.

26 (5) No person may claim a credit against taxes due under both
27 this chapter and chapter 82.16 RCW for amounts paid toward the same
28 qualifying public health emergency sick or child care leave hours.

29 (6) The definitions in this subsection apply throughout this
30 section unless the context clearly requires otherwise.

31 (a) "Public health emergency" has the same meaning as in section
32 1 of this act.

33 (b) "Qualifying public health emergency" means any public health
34 emergency in which an employer is required to provide paid sick or
35 child care leave to its employees as provided in sections 14 and 16
36 of this act.

37 (c) "Qualifying wages" means any wages paid by an employer in
38 which a credit may be claimed under this section.

1 NEW SECTION. **Sec. 18.** A new section is added to chapter 82.16
2 RCW to read as follows:

3 (1) Beginning July 1, 2021, a credit against the tax due under
4 this chapter is allowed for any employer who meets the public health
5 emergency paid sick or child care leave requirements under sections
6 14 and 16 of this act. The credit is equal to the full amount of
7 wages paid by the employer in qualifying public health emergency paid
8 sick or child care leave in the previous calendar quarter as provided
9 in this section.

10 (2) A credit under this section may not be claimed if a federal
11 tax credit is available for wages paid under the same qualifying
12 public health emergency.

13 (3) The credit under this section may be used against any tax due
14 under this chapter and may be carried forward to future reporting
15 periods for a maximum of one year. No refunds may be granted for
16 credits under this section.

17 (4) Credits earned under this section may be claimed only on
18 returns filed electronically with the department using the
19 department's online tax filing service or other method of electronic
20 reporting as the department may authorize. No application is required
21 to claim the credit, but the taxpayer must keep records necessary for
22 the department to determine eligibility under this section.

23 (5) No person may claim a credit against taxes due under both
24 this chapter and chapter 82.04 RCW for amounts paid toward the same
25 qualifying public health emergency sick or child care leave hours.

26 (6) The definitions in this subsection apply throughout this
27 section unless the context clearly requires otherwise.

28 (a) "Public health emergency" has the same meaning as in section
29 1 of this act.

30 (b) "Qualifying public health emergency" means any public health
31 emergency in which an employer is required to provide paid sick or
32 child care leave to its employees as provided in sections 14 and 16
33 of this act.

34 (c) "Qualifying wages" means any wages paid by an employer in
35 which a credit may be claimed under this section.

36 NEW SECTION. **Sec. 19.** The provisions of RCW 82.32.805 and
37 82.32.808 do not apply to sections 17 and 18 of this act.

1 NEW SECTION. **Sec. 20.** The department may adopt rules to
2 implement the provisions of sections 1, 4, 7, 12, 14, and 16 of this
3 act.

4 NEW SECTION. **Sec. 21.** This chapter may be known and cited as
5 the health emergency labor standards act.

6 NEW SECTION. **Sec. 22.** Sections 1, 4, 7, 12, 14, 16, 20, and 21
7 of this act constitute a new chapter in Title 49 RCW.

8 NEW SECTION. **Sec. 23.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of
10 the state government and its existing public institutions, and takes
11 effect immediately.

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