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**SUBSTITUTE SENATE BILL 5190**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Labor, Commerce & Tribal Affairs (originally sponsored by Senators Holy, Frockt, Conway, Hasegawa, Honeyford, Keiser, King, Lovelett, Randall, Salomon, Van De Wege, Warnick, Wilson, C., and Wilson, J.)

READ FIRST TIME 02/12/21.

1 AN ACT Relating to providing health care workers with presumptive  
2 benefits during a public health emergency; amending RCW 50.04.294,  
3 50.20.010, 50.29.021, and 51.52.130; reenacting and amending RCW  
4 50.20.050; adding a new section to chapter 50.04 RCW; adding new  
5 sections to chapter 51.32 RCW; creating a new section; and declaring  
6 an emergency.

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

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

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

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

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

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

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

1 (d) Carelessness or negligence of such degree or recurrence to  
2 show an intentional or substantial disregard of the employer's  
3 interest.

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

8 (a) Insubordination showing a deliberate, willful, or purposeful  
9 refusal to follow the reasonable directions or instructions of the  
10 employer;

11 (b) Repeated inexcusable tardiness following warnings by the  
12 employer;

13 (c) Dishonesty related to employment, including but not limited  
14 to deliberate falsification of company records, theft, deliberate  
15 deception, or lying;

16 (d) Repeated and inexcusable absences, including absences for  
17 which the employee was able to give advance notice and failed to do  
18 so;

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

23 (f) Violation of a company rule if the rule is reasonable and if  
24 the claimant knew or should have known of the existence of the rule;  
25 or

26 (g) Violations of law by the claimant while acting within the  
27 scope of employment that substantially affect the claimant's job  
28 performance or that substantially harm the employer's ability to do  
29 business.

30 (3) "Misconduct" does not include:

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

33 (b) Inadvertence or ordinary negligence in isolated instances;  
34 ((~~or~~))

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

36 (d) Entering quarantine because of exposure to or contracting the  
37 disease that is the subject of the declaration of the public health  
38 emergency.

39 (4) "Gross misconduct" means a criminal act in connection with an  
40 individual's work for which the individual has been convicted in a

1 criminal court, or has admitted committing, or conduct connected with  
2 the individual's work that demonstrates a flagrant and wanton  
3 disregard of and for the rights, title, or interest of the employer  
4 or a fellow employee.

5 **Sec. 2.** RCW 50.20.010 and 2020 c 7 s 8 are each amended to read  
6 as follows:

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

10 (a) He or she has registered for work at, and thereafter has  
11 continued to report at, an employment office in accordance with such  
12 regulation as the commissioner may prescribe, except that the  
13 commissioner may by regulation waive or alter either or both of the  
14 requirements of this subdivision as to individuals attached to  
15 regular jobs and as to such other types of cases or situations with  
16 respect to which the commissioner finds that the compliance with such  
17 requirements would be oppressive, or would be inconsistent with the  
18 purposes of this title;

19 (b) He or she has filed an application for an initial  
20 determination and made a claim for waiting period credit or for  
21 benefits in accordance with the provisions of this title;

22 (c) He or she is able to work, and is available for work in any  
23 trade, occupation, profession, or business for which he or she is  
24 reasonably fitted.

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

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

1 (iii) For the purposes of this subsection, "customary trade  
2 practices" includes compliance with an electrical apprenticeship  
3 training program that includes a recognized referral system under  
4 apprenticeship program standards approved by the Washington state  
5 apprenticeship and training council;

6 (d) He or she has been unemployed for a waiting period of one  
7 week;

8 (e) He or she participates in reemployment services if the  
9 individual has been referred to reemployment services pursuant to the  
10 profiling system established by the commissioner under RCW 50.20.011,  
11 unless the commissioner determines that:

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

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

15 (f) As to weeks beginning after March 31, 1981, which fall within  
16 an extended benefit period as defined in RCW 50.22.010, the  
17 individual meets the terms and conditions of RCW 50.22.020 with  
18 respect to benefits claimed in excess of twenty-six times the  
19 individual's weekly benefit amount.

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

24 (3) During the weeks of a public health emergency, an unemployed  
25 individual may also meet the requirements of subsection (1)(c) of  
26 this section if the unemployed individual described in RCW  
27 50.20.050(2)(b)(xii) and 50.29.021(1)(c)(iii) is able to perform,  
28 available to perform, and actively seeking suitable work which will  
29 commence after quarantine or which can be performed for an employer  
30 from the individual's home.

31 **Sec. 3.** RCW 50.20.050 and 2009 c 493 s 3 and 2009 c 247 s 1 are  
32 each reenacted and amended to read as follows:

33 (1) With respect to ~~((claims that have an effective date on or~~  
34 ~~after January 4, 2004, and for separations that occur before~~  
35 ~~September 6, 2009)) separations that occur on or after September 6,~~  
36 ~~2009, and for separations that occur before July 4, 2021:~~

37 (a) ~~((An individual))~~ A claimant shall be disqualified from  
38 benefits beginning with the first day of the calendar week in which  
39 ~~((he or she has))~~ the claimant left work voluntarily without good

1 cause and thereafter for seven calendar weeks and until (~~he or she~~  
2 ~~has obtained~~) the claimant obtains bona fide work in employment  
3 covered by this title and earned wages in that employment equal to  
4 seven times (~~his or her~~) the claimant's weekly benefit amount. Good  
5 cause reasons to leave work are limited to reasons listed in (b) of  
6 this subsection.

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

11 (i) The duration of the work;

12 (ii) The extent of direction and control by the employer over the  
13 work; and

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

16 (b) (~~An individual~~) A claimant has good cause and is not  
17 disqualified from benefits under (a) of this subsection (~~when~~) only  
18 under the following circumstances:

19 (i) (~~He or she~~) The claimant has left work to accept a bona  
20 fide offer of bona fide work as described in (a) of this subsection;

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

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

32 (B) The claimant terminated (~~his or her~~) the claimant's  
33 employment status, and is not entitled to be reinstated to the same  
34 position or a comparable or similar position;

35 (iii) (~~(A) With respect to claims that have an effective date~~  
36 ~~before July 2, 2006, he or she: (I))~~ The claimant: (A) Left work to  
37 relocate for the (~~spouse's~~) employment (~~that, due to a mandatory~~  
38 ~~military transfer: (1) Is outside the existing labor market area; and~~  
39 ~~(2) is in Washington or another state that, pursuant to statute, does~~  
40 ~~not consider such an individual to have left work voluntarily without~~

1 good cause; and (II) remained employed as long as was reasonable  
2 prior to the move;

3 (B) With respect to claims that have an effective date on or  
4 after July 2, 2006, he or she: (I) Left work to relocate for the  
5 spouse's employment that, due to a mandatory military transfer, is  
6 outside the existing labor market area; and (II) remained employed as  
7 long as was reasonable prior to the move) of a spouse or domestic  
8 partner that is outside the existing labor market area; and (B)  
9 remained employed as long as was reasonable 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 ((individual's)) claimant's usual compensation was  
14 reduced by twenty-five percent or more;

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

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

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

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

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

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

39 (2) With respect to separations that occur on or after  
40 ((September 6, 2009)) July 4, 2021:

1 (a) (~~An individual~~) A claimant shall be disqualified from  
2 benefits beginning with the first day of the calendar week in which  
3 (~~he or she~~) the claimant has left work voluntarily without good  
4 cause and thereafter for seven calendar weeks and until (~~he or she~~)  
5 the claimant has obtained bona fide work in employment covered by  
6 this title and earned wages in that employment equal to seven times  
7 (~~his or her~~) the claimant's weekly benefit amount. Good cause  
8 reasons to leave work are limited to reasons listed in (b) of this  
9 subsection.

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

14 (i) The duration of the work;

15 (ii) The extent of direction and control by the employer over the  
16 work; and

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

19 (b) (~~An individual~~) A claimant has good cause and is not  
20 disqualified from benefits under (a) of this subsection only under  
21 the following circumstances:

22 (i) (~~He or she~~) The claimant has left work to accept a bona  
23 fide offer of bona fide work as described in (a) of this subsection;

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

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

36 (B) The claimant terminated (~~his or her~~) the claimant's  
37 employment status, and is not entitled to be reinstated to the same  
38 position or a comparable or similar position;

39 (iii) The claimant: (A) Left work to relocate for the employment  
40 of a spouse or domestic partner that is outside the existing labor

1 market area; and (B) remained employed as long as was reasonable  
2 prior to the move;

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

6 (v) The ~~((individual's))~~ claimant's usual compensation was  
7 reduced by twenty-five percent or more;

8 (vi) The ~~((individual's))~~ claimant's usual hours were reduced by  
9 twenty-five percent or more;

10 (vii) The ~~((individual's))~~ claimant's worksite changed, such  
11 change caused a material increase in distance or difficulty of  
12 travel, and, after the change, the commute was greater than is  
13 customary for workers in the individual's job classification and  
14 labor market;

15 (viii) The ~~((individual's))~~ claimant's worksite safety  
16 deteriorated, the ~~((individual))~~ claimant reported such safety  
17 deterioration to the employer, and the employer failed to correct the  
18 hazards within a reasonable period of time;

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

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

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

33 (xii) During a public health emergency, the claimant worked at a  
34 health care facility as defined in RCW 9A.50.010, was directly  
35 involved in the delivery of health services, and left work due to  
36 entering quarantine because of exposure to or contracting the disease  
37 that is the subject of the declaration of the public health  
38 emergency.

39 (3) Notwithstanding subsection ~~((+2))~~ (1) of this section, ~~((for~~  
40 ~~separations occurring on or after July 26, 2009, an individual))~~ a



1 claimant who was simultaneously employed in full-time employment and  
2 part-time employment and is otherwise eligible for benefits from the  
3 loss of the full-time employment shall not be disqualified from  
4 benefits because the (~~individual~~) claimant:

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

7 (b) Did not have prior knowledge that (~~he or she~~) the claimant  
8 would be separated from full-time employment.

9 NEW SECTION. Sec. 4. A new section is added to chapter 50.04  
10 RCW to read as follows:

11 "Public health emergency" means a declaration or order that  
12 covers the jurisdiction where the unemployed individual was working  
13 on the date the individual became unemployed concerning any  
14 dangerous, contagious, or infectious diseases, including a pandemic,  
15 and is issued as follows:

16 (1) The president of the United States has declared a national or  
17 regional emergency;

18 (2) The governor of Washington declared a state of emergency  
19 under RCW 43.06.010(12); or

20 (3) The governor or state executive of another state where the  
21 unemployed individual was working at the time of the declaration  
22 declared a state of emergency.

23 Sec. 5. RCW 50.29.021 and 2020 c 86 s 3 are each amended to read  
24 as follows:

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

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

1 (c) When the eligible individual's separating employer is a  
2 covered contribution paying base year employer, benefits paid to the  
3 eligible individual shall be charged to the experience rating account  
4 of only the individual's separating employer if the individual  
5 qualifies for benefits under:

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

9 (ii) RCW 50.20.050 (1)(b)(v) through (x) or (2)(b)(v) through  
10 (x); or

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

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

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

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

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

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

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

39 (d) In the case of individuals who requalify for benefits under  
40 RCW 50.20.050 or 50.20.060, benefits based on wage credits earned

1 prior to the disqualifying separation shall not be charged to the  
2 experience rating account of the contribution paying employer from  
3 whom that separation took place.

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

8 ~~((With respect to claims with an effective date on or after  
9 the first Sunday following April 22, 2005, benefits))~~ Benefits paid  
10 that exceed the benefits that would have been paid if the weekly  
11 benefit amount for the claim had been determined as one percent of  
12 the total wages paid in the individual's base year shall not be  
13 charged to the experience rating account of any contribution paying  
14 employer. This subsection (2)(f) does not apply to the calculation of  
15 contribution rates under RCW 50.29.025 for rate year 2010 and  
16 thereafter.

17 ~~((The forty-five dollar increase paid as part of an  
18 individual's weekly benefit amount as provided in RCW 50.20.1201 and  
19 the twenty-five dollar increase paid as part of an individual's  
20 weekly benefit amount as provided in RCW 50.20.1202 shall not be  
21 charged to the experience rating account of any contribution paying  
22 employer.~~

23 ~~((h) With respect to claims where the minimum amount payable  
24 weekly is increased to one hundred fifty-five dollars pursuant to RCW  
25 50.20.1201(3), benefits paid that exceed the benefits that would have  
26 been paid if the minimum amount payable weekly had been calculated  
27 pursuant to RCW 50.20.120 shall not be charged to the experience  
28 rating account of any contribution paying employer.~~

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

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

37 (3)(a) A contribution paying base year employer, except employers  
38 as provided in subsection (5) of this section, not otherwise eligible  
39 for relief of charges for benefits under this section, may receive

1 such relief if the benefit charges result from payment to an  
2 individual who:

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

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

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

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

20 (v) Continues to be employed on a regularly scheduled permanent  
21 part-time basis by a base year employer and who qualified for two  
22 consecutive unemployment claims where wages were attributable to at  
23 least one employer who employed the individual in both base years.  
24 Benefit charge relief ceases when the employment relationship between  
25 the employer requesting relief and the claimant is terminated. This  
26 subsection does not apply to shared work employers under chapter  
27 50.60 RCW;

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

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

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

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

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

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

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

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

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

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

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

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

19 NEW SECTION. **Sec. 7.** A new section is added to chapter 51.32  
20 RCW to read as follows:

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

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

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

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

1 (b) The employee was working from the employee's home or other  
2 location not under the employer's control, on leave from the  
3 employee's employment, or some combination thereof, for the period of  
4 quarantine outlined for the disease immediately prior to the  
5 employee's date of disease contraction or period of incapacity  
6 resulting from exposure to the disease which is the subject of the  
7 public health emergency.

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

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

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

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

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

40 (7) For purposes of this section:

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

6 (b) "Health care facility" has the same meaning as in RCW  
7 9A.50.010.

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

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

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

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

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

22 **Sec. 8.** RCW 51.52.130 and 2007 c 490 s 4 are each amended to  
23 read as follows:

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

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



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

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

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

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

25       **(3)** In an appeal to the superior or appellate court involving the  
26 presumption established under section 7 of this act, the attorneys'  
27 fees and costs shall be payable as set forth under section 7 of this  
28 act.

29       NEW SECTION.   **Sec. 9.** A new section is added to chapter 51.32  
30 RCW to read as follows:

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

1 the claimant is not then a resident of this state, in the superior  
2 court for the county in which that party may be served with process.

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

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

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

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