
SENATE BILL 5190

State of Washington

67th Legislature

2021 Regular Session

By Senators Holy, Frockt, Conway, Hasegawa, Honeyford, Keiser, King, Lovelett, Randall, Salomon, Van De Wege, Warnick, Wilson, C., and Wilson, J.

Read first time 01/13/21. Referred to Committee on Labor, Commerce & Tribal Affairs.

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

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

7 **Sec. 1.** RCW 50.20.010 and 2020 c 7 s 8 are each amended to read
8 as follows:

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

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

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

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

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

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

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

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

29 (e) He or she participates in reemployment services if the
30 individual has been referred to reemployment services pursuant to the
31 profiling system established by the commissioner under RCW 50.20.011,
32 unless the commissioner determines that:

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

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

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

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

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

11 **Sec. 2.** RCW 50.20.050 and 2009 c 493 s 3 and 2009 c 247 s 1 are
12 each reenacted and amended to read as follows:

13 (1) With respect to ~~((claims that have an effective date on or~~
14 ~~after January 4, 2004, and for separations that occur before~~
15 ~~September 6, 2009))~~ separations that occur on or after September 6,
16 2009:

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

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

30 (i) The duration of the work;

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

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

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

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

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

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

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

15 ~~((A) With respect to claims that have an effective date
16 before July 2, 2006, he or she: (I))~~ The claimant: (A) Left work to
17 relocate for the ~~((spouse's))~~ employment ~~((that, due to a mandatory
18 military transfer: (1) Is outside the existing labor market area; and
19 (2) is in Washington or another state that, pursuant to statute, does
20 not consider such an individual to have left work voluntarily without
21 good cause; and (II) remained employed as long as was reasonable
22 prior to the move;~~

23 ~~(B) With respect to claims that have an effective date on or
24 after July 2, 2006, he or she: (I) Left work to relocate for the
25 spouse's employment that, due to a mandatory military transfer, is
26 outside the existing labor market area; and (II) remained employed as
27 long as was reasonable prior to the move))~~ of a spouse or domestic
28 partner that is outside the existing labor market area; and (B)
29 remained employed as long as was reasonable prior to the move;

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

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

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

37 (vii) The ~~((individual's))~~ claimant's worksite changed, such
38 change caused a material increase in distance or difficulty of
39 travel, and, after the change, the commute was greater than is

1 customary for workers in the (~~individual's~~) claimant's job
2 classification and labor market;

3 (viii) The (~~individual's~~) claimant's worksite safety
4 deteriorated, the (~~individual~~) claimant reported such safety
5 deterioration to the employer, and the employer failed to correct the
6 hazards within a reasonable period of time;

7 (ix) The (~~individual~~) claimant left work because of illegal
8 activities in the (~~individual's~~) claimant's worksite, the
9 (~~individual~~) claimant reported such activities to the employer, and
10 the employer failed to end such activities within a reasonable period
11 of time;

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

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

21 (xii) The claimant is a health care employee, during a public
22 health emergency, who is unable to work or was terminated from work
23 during a public health emergency due to being under quarantine from
24 or after contracting the disease that is the subject of the public
25 health emergency. It is presumed that the worker was exposed to the
26 disease at the health care facility. For purposes of this subsection,
27 "health care employee" means an employee who is directly involved in
28 the delivery of health services in a health care facility. For
29 purposes of this subsection "health care facility" has the same
30 meaning as in RCW 9A.50.010. This subsection does not eliminate any
31 employment rights an employee may have for any other violation of the
32 law.

33 (2) (~~With respect to separations that occur on or after~~
34 ~~September 6, 2009:~~

35 ~~(a) An individual shall be disqualified from benefits beginning~~
36 ~~with the first day of the calendar week in which he or she has left~~
37 ~~work voluntarily without good cause and thereafter for seven calendar~~
38 ~~weeks and until he or she has obtained bona fide work in employment~~
39 ~~covered by this title and earned wages in that employment equal to~~

1 ~~seven times his or her weekly benefit amount. Good cause reasons to~~
2 ~~leave work are limited to reasons listed in (b) of this subsection.~~

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

7 ~~(i) The duration of the work;~~

8 ~~(ii) The extent of direction and control by the employer over the~~
9 ~~work; and~~

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

12 ~~(b) An individual has good cause and is not disqualified from~~
13 ~~benefits under (a) of this subsection only under the following~~
14 ~~circumstances:~~

15 ~~(i) He or she has left work to accept a bona fide offer of bona~~
16 ~~fide work as described in (a) of this subsection;~~

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

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

28 ~~(B) The claimant terminated his or her employment status, and is~~
29 ~~not entitled to be reinstated to the same position or a comparable or~~
30 ~~similar position;~~

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

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

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

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

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

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

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

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

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

22 ~~(3))~~ Notwithstanding subsection ~~((2))~~ (1) of this section,
23 ~~((for separations occurring on or after July 26, 2009, an~~
24 ~~individual))~~ a claimant who was simultaneously employed in full-time
25 employment and part-time employment and is otherwise eligible for
26 benefits from the loss of the full-time employment shall not be
27 disqualified from benefits because the ~~((individual))~~ claimant:

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

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

32 NEW SECTION. Sec. 3. A new section is added to chapter 50.04
33 RCW to read as follows:

34 "Public health emergency" means a declaration or order that
35 covers the jurisdiction where the unemployed individual was working
36 on the date the individual became unemployed concerning any
37 dangerous, contagious, or infectious diseases, including a pandemic,
38 and is issued as follows:

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

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

5 (3) The governor or state executive of another state where the
6 unemployed individual was working at the time of the declaration
7 declared a state of emergency.

8 **Sec. 4.** RCW 50.29.021 and 2020 c 86 s 3 are each amended to read
9 as follows:

10 (1)(a) An experience rating account shall be established and
11 maintained for each employer, except employers as described in RCW
12 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
13 payments in lieu of contributions, taxable local government employers
14 as described in RCW 50.44.035, and those employers who are required
15 to make payments in lieu of contributions, based on existing records
16 of the employment security department.

17 (b) Benefits paid to an eligible individual shall be charged to
18 the experience rating accounts of each of such individual's employers
19 during the individual's base year in the same ratio that the wages
20 paid by each employer to the individual during the base year bear to
21 the wages paid by all employers to that individual during that base
22 year, except as otherwise provided in this section.

23 (c) When the eligible individual's separating employer is a
24 covered contribution paying base year employer, benefits paid to the
25 eligible individual shall be charged to the experience rating account
26 of only the individual's separating employer if the individual
27 qualifies for benefits under:

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

31 (ii) RCW 50.20.050 (1)(b) (v) through (x) (~~((or (2)(b) (v) through~~
32 ~~(x)))~~).

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

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

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

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

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

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

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

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

25 (f) With respect to claims with an effective date on or after the
26 first Sunday following April 22, 2005, benefits paid that exceed the
27 benefits that would have been paid if the weekly benefit amount for
28 the claim had been determined as one percent of the total wages paid
29 in the individual's base year shall not be charged to the experience
30 rating account of any contribution paying employer. This subsection
31 (2)(f) does not apply to the calculation of contribution rates under
32 RCW 50.29.025 for rate year 2010 and thereafter.

33 (g) The forty-five dollar increase paid as part of an
34 individual's weekly benefit amount as provided in RCW 50.20.1201 and
35 the twenty-five dollar increase paid as part of an individual's
36 weekly benefit amount as provided in RCW 50.20.1202 shall not be
37 charged to the experience rating account of any contribution paying
38 employer.

39 (h) With respect to claims where the minimum amount payable
40 weekly is increased to one hundred fifty-five dollars pursuant to RCW

1 50.20.1201(3), benefits paid that exceed the benefits that would have
2 been paid if the minimum amount payable weekly had been calculated
3 pursuant to RCW 50.20.120 shall not be charged to the experience
4 rating account of any contribution paying employer.

5 (i) Upon approval of an individual's training benefits plan
6 submitted in accordance with RCW 50.22.155(2), an individual is
7 considered enrolled in training, and regular benefits beginning with
8 the week of approval shall not be charged to the experience rating
9 account of any contribution paying employer.

10 (j) Training benefits paid to an individual under RCW 50.22.155
11 shall not be charged to the experience rating account of any
12 contribution paying employer.

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

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

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

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

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

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

1 subsection does not apply to shared work employers under chapter
2 50.60 RCW;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (1) For health care employees who are covered under this title,
37 there exists a prima facie presumption that any infectious or
38 contagious diseases which are the subject of a public health

1 emergency are occupational diseases under RCW 51.08.140 during a
2 public health emergency. There is a presumption that the health care
3 employee contracted or was exposed to the disease at the health care
4 facility.

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

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

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

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

21 (4) For purposes of RCW 51.32.090(7), the period of 14
22 consecutive calendar days shall be 10 consecutive calendar days.

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

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

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

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

4 (7) For purposes of this section:

5 (a) "Health care employee" means an employee who is directly
6 involved in the delivery of health services in a health care
7 facility.

8 (b) "Contracted" means whichever date occurs first of the
9 following:

10 (i) The date that the health care employee first missed work due
11 to symptoms of the infectious or contagious disease;

12 (ii) The date the health care employee was quarantined by a
13 medical provider or public health official; or

14 (iii) The date the health care employee received a positive test
15 result confirming contraction of the infectious or contagious
16 disease.

17 (c) "Health care facility" has the same meaning as in RCW
18 9A.50.010.

19 (d) "Public health emergency" means a declaration or order that
20 covers the jurisdiction where the unemployed individual was working
21 on the date the individual became unemployed concerning any
22 dangerous, contagious, or infectious diseases, including a pandemic,
23 and is issued as follows:

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

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

28 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
29 preservation of the public peace, health, or safety, or support of
30 the state government and its existing public institutions, and takes
31 effect immediately.

--- END ---