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**SUBSTITUTE SENATE BILL 5425**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Labor, Commerce & Tribal Affairs (originally sponsored by Senators Stanford, Das, Hasegawa, Keiser, Kuderer, Nguyen, and Saldaña; by request of Employment Security Department)

READ FIRST TIME 02/15/21.

1 AN ACT Relating to extended benefits in the unemployment  
2 insurance system; amending RCW 50.22.010; reenacting and amending RCW  
3 50.22.020; adding a new section to chapter 50.22 RCW; creating a new  
4 section; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 50.22  
7 RCW to read as follows:

8 (1) Beginning December 27, 2020, through April 12, 2021, or such  
9 subsequent date as may be provided by the employment security  
10 department by rule, an individual's eligibility period under RCW  
11 50.22.010(8)(a) shall also include any week that begins in an  
12 extended benefit period that is in effect in this state and after the  
13 individual exhausted all rights to pandemic emergency unemployment  
14 compensation, as established in the CARES act (P.L. 116-136), as  
15 amended.

16 (2) With respect to determining whether the state is in an  
17 extended benefit period beginning November 1, 2020, through December  
18 31, 2021, or such subsequent date as may be provided by the  
19 employment security department by rule, the state shall disregard the  
20 requirement in RCW 50.22.010(1)(b) that no extended benefit period

1 may begin before the fourteenth week following the end of a prior  
2 extended benefit period which was in effect.

3 (3) For purposes of subsections (1) and (2) of this section, the  
4 employment security department may not adopt a subsequent date by  
5 rule if the federal share of extended benefits is less than 50  
6 percent minus any reductions required by the budget control act of  
7 2011, P.L. 112-25.

8 **Sec. 2.** RCW 50.22.010 and 2013 c 23 s 103 are each amended to  
9 read as follows:

10 As used in this chapter, unless the context clearly indicates  
11 otherwise:

12 (1) "Extended benefit period" means a period which:

13 (a) Begins with the third week after a week for which there is an  
14 "on" indicator; and

15 (b) (~~Ends~~) Except as provided in section 1 of this act, ends  
16 with the third week after the first week for which there is an "off"  
17 indicator: PROVIDED, That no extended benefit period shall last for a  
18 period of less than thirteen consecutive weeks, and further that no  
19 extended benefit period may begin by reason of an "on" indicator  
20 before the fourteenth week after the close of a prior extended  
21 benefit period which was in effect with respect to this state.

22 (2)(a) There is an "on" indicator for this state for a week if  
23 the commissioner determines, in accordance with the regulations of  
24 the United States secretary of labor, that for the period consisting  
25 of such week and the immediately preceding twelve weeks:

26 (i) The rate of insured unemployment, not seasonally adjusted,  
27 equaled or exceeded one hundred twenty percent of the average of such  
28 rates for the corresponding thirteen-week period ending in each of  
29 the preceding two calendar years and equaled or exceeded five  
30 percent; or

31 (ii) For benefits for weeks of unemployment beginning after March  
32 6, 1993:

33 (A) The average rate of total unemployment, seasonally adjusted,  
34 as determined by the United States secretary of labor, for the period  
35 consisting of the most recent three months for which data for all  
36 states are published before the close of the week equals or exceeds  
37 six and one-half percent; and

38 (B) The average rate of total unemployment in the state,  
39 seasonally adjusted, as determined by the United States secretary of

1 labor, for the three-month period referred to in (a)(ii)(A) of this  
2 subsection, equals or exceeds one hundred ten percent of the average  
3 for either or both of the corresponding three-month periods ending in  
4 the two preceding calendar years.

5 (b) This subsection applies as provided under the tax relief,  
6 unemployment insurance reauthorization, and job creation act of 2010  
7 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent  
8 date as may be provided by the department by rule, consistent with  
9 the purposes of this subsection:

10 (i) The average rate of insured unemployment, not seasonally  
11 adjusted, equaled or exceeded one hundred twenty percent of the  
12 average of such rates for the corresponding thirteen-week period  
13 ending in all of the preceding three calendar years and equaled or  
14 exceeded five percent; or

15 (ii) The average rate of total unemployment, seasonally adjusted,  
16 as determined by the United States secretary of labor, for the period  
17 consisting of the most recent three months for which data for all  
18 states are published before the close of the week equals or exceeds  
19 six and one-half percent; and

20 (iii) The average rate of total unemployment in the state,  
21 seasonally adjusted, as determined by the United States secretary of  
22 labor, for the three-month period referred to in (b)(ii) of this  
23 subsection, equals or exceeds one hundred ten percent of the average  
24 for any of the corresponding three-month periods ending in the three  
25 preceding calendar years.

26 (3) (a) "High unemployment period" means any period of  
27 unemployment beginning after March 6, 1993, during which an extended  
28 benefit period would be in effect if:

29 (i) The average rate of total unemployment, seasonally adjusted,  
30 as determined by the United States secretary of labor, for the period  
31 consisting of the most recent three months for which data for all  
32 states are published before the close of the week equals or exceeds  
33 eight percent; and

34 (ii) The average rate of total unemployment in the state,  
35 seasonally adjusted, as determined by the United States secretary of  
36 labor, for the three-month period referred to in (a)(i) of this  
37 subsection, equals or exceeds one hundred ten percent of the average  
38 for either or both of the corresponding three-month periods ending in  
39 the two preceding calendar years.

1 (b) This subsection applies as provided under the tax relief,  
2 unemployment insurance reauthorization, and job creation act of 2010  
3 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent  
4 date as may be provided by the department by rule, consistent with  
5 the purposes of this subsection:

6 (i) The average rate of total unemployment, seasonally adjusted,  
7 as determined by the United States secretary of labor, for the period  
8 consisting of the most recent three months for which data for all  
9 states are published before the close of the week equals or exceeds  
10 eight percent; and

11 (ii) The average rate of total unemployment in the state,  
12 seasonally adjusted, as determined by the United States secretary of  
13 labor, for the three-month period referred to in (a)(i) of this  
14 subsection, equals or exceeds one hundred ten percent of the average  
15 for any of the corresponding three-month periods ending in the three  
16 preceding calendar years.

17 (4) There is an "off" indicator for this state for a week only  
18 if, for the period consisting of such week and immediately preceding  
19 twelve weeks, none of the options specified in subsection (2) or (3)  
20 of this section result in an "on" indicator.

21 (5) "Regular benefits" means benefits payable to an individual  
22 under this title or under any state law (including benefits payable  
23 to federal civilian employees and to ex-servicemen or ex-servicewomen  
24 pursuant to 5 U.S.C. chapter 85) other than extended benefits or  
25 additional benefits.

26 (6) "Extended benefits" means benefits payable for weeks of  
27 unemployment beginning in an extended benefit period to an individual  
28 under this title or under any state law (including benefits payable  
29 to federal civilian employees and to ex-servicemen or ex-servicewomen  
30 pursuant to 5 U.S.C. chapter 85) other than regular or additional  
31 benefits.

32 (7) "Additional benefits" are benefits totally financed by the  
33 state and payable under this title to exhaustees by reason of  
34 conditions of high unemployment or by reason of other special  
35 factors.

36 (8) "Eligibility period" of an individual means:

37 (a) ~~((The))~~ Except as provided in section 1 of this act, the  
38 period consisting of the weeks in his or her benefit year which begin  
39 in an extended benefit period that is in effect in this state and, if

1 his or her benefit year ends within such extended benefit period, any  
2 weeks thereafter which begin in such period; or

3 (b) For an individual who is eligible for emergency unemployment  
4 compensation during the extended benefit period beginning February  
5 15, 2009, the period consisting of the week ending February 28, 2009,  
6 and applies as provided under the tax relief, unemployment insurance  
7 reauthorization, and job creation act of 2010 (P.L. 111-312) as it  
8 existed on December 17, 2010, or such subsequent date as may be  
9 provided by the department by rule, consistent with the purposes of  
10 this subsection.

11 (9) "Additional benefit eligibility period" of an individual  
12 means the period consisting of the weeks in his or her benefit year  
13 which begin in an additional benefit period that is in effect and, if  
14 his or her benefit year ends within such additional benefit period,  
15 any weeks thereafter which begin in such period.

16 (10) "Exhaustee" means an individual who, with respect to any  
17 week of unemployment in his or her eligibility period:

18 (a) Has received, prior to such week, all of the regular benefits  
19 that were payable to him or her under this title or any other state  
20 law (including dependents' allowances and regular benefits payable to  
21 federal civilian employees and ex-servicemen or ex-servicewomen under  
22 5 U.S.C. chapter 85) in his or her current benefit year that includes  
23 such week; or

24 (b) Has received, prior to such week, all of the regular benefits  
25 that were available to him or her under this title or any other state  
26 law (including dependents' allowances and regular benefits available  
27 to federal civilian employees and ex-servicemen or ex-servicewomen  
28 under 5 U.S.C. chapter 85) in his or her current benefit year that  
29 includes such week, after the cancellation of some or all of his or  
30 her wage credits or the total or partial reduction of his or her  
31 rights to regular benefits: PROVIDED, That, for the purposes of (a)  
32 and (b) of this subsection, an individual shall be deemed to have  
33 received in his or her current benefit year all of the regular  
34 benefits that were payable to him or her, or available to him or her,  
35 as the case may be, even though:

36 (i) As a result of a pending appeal with respect to wages or  
37 employment, or both, that were not included in the original monetary  
38 determination with respect to his or her current benefit year, he or  
39 she may subsequently be determined to be entitled to more regular  
40 benefits; or

1 (ii) By reason of the seasonal provisions of another state law,  
2 he or she is not entitled to regular benefits with respect to such  
3 week of unemployment (although he or she may be entitled to regular  
4 benefits with respect to future weeks of unemployment in the next  
5 season, as the case may be, in his or her current benefit year), and  
6 he or she is otherwise an exhaustee within the meaning of this  
7 section with respect to his or her right to regular benefits under  
8 such state law seasonal provisions during the season or off season in  
9 which that week of unemployment occurs; or

10 (iii) Having established a benefit year, no regular benefits are  
11 payable to him or her during such year because his or her wage  
12 credits were canceled or his or her right to regular benefits was  
13 totally reduced as the result of the application of a  
14 disqualification; or

15 (c) His or her benefit year having ended prior to such week, he  
16 or she has insufficient wages or employment, or both, on the basis of  
17 which he or she could establish in any state a new benefit year that  
18 would include such week, or having established a new benefit year  
19 that includes such week, he or she is precluded from receiving  
20 regular benefits by reason of the provision in RCW 50.04.030 which  
21 meets the requirement of section 3304(a)(7) of the federal  
22 unemployment tax act, or the similar provision in any other state  
23 law; and

24 (d)(i) Has no right for such week to unemployment benefits or  
25 allowances, as the case may be, under the railroad unemployment  
26 insurance act, the trade expansion act of 1962, and such other  
27 federal laws as are specified in regulations issued by the United  
28 States secretary of labor; and

29 (ii) Has not received and is not seeking for such week  
30 unemployment benefits under the unemployment compensation law of  
31 Canada, unless the appropriate agency finally determines that he or  
32 she is not entitled to unemployment benefits under such law for such  
33 week.

34 (11) "State law" means the unemployment insurance law of any  
35 state, approved by the United States secretary of labor under section  
36 3304 of the internal revenue code of 1954.

37 **Sec. 3.** RCW 50.22.020 and 1993 c 483 s 16 and 1993 c 58 s 3 are  
38 each reenacted and amended to read as follows:

1       When the result would not be inconsistent with the other  
2 provisions of this chapter, the provisions of this title and  
3 commissioner's regulations enacted pursuant thereto, which apply to  
4 claims for, or the payment of, regular benefits, shall apply to  
5 claims for, and the payment of, extended benefits: PROVIDED, That

6       (1) Payment of extended compensation under this chapter shall not  
7 be made to any individual for any week of unemployment in his or her  
8 eligibility period—

9       (a) During which he or she fails to accept any offer of suitable  
10 work (as defined in subsection (3) of this section) or fails to apply  
11 for any suitable work to which he or she was referred by the  
12 employment security department; or

13       (b) During which he or she fails to actively engage in seeking  
14 work.

15       (2) If any individual is ineligible for extended compensation for  
16 any week by reason of a failure described in subsections (1)(a) or  
17 (1)(b) of this section, the individual shall be ineligible to receive  
18 extended compensation for any week which begins during a period which

19 —

20       (a) Begins with the week following the week in which such failure  
21 occurs; and

22       (b) Does not end until such individual has been employed during  
23 at least four weeks which begin after such failure and the total of  
24 the remuneration earned by the individual for being so employed is  
25 not less than the product of four multiplied by the individual's  
26 weekly benefit amount (as determined under RCW 50.20.120) for his or  
27 her benefit year.

28       (3) For purposes of this section, the term "suitable work" means,  
29 with respect to any individual, any work which is within such  
30 individual's capabilities and which does not involve conditions  
31 described in RCW 50.20.110: PROVIDED, That if the individual  
32 furnishes evidence satisfactory to the employment security department  
33 that such individual's prospects for obtaining work in his or her  
34 customary occupation within a reasonably short period are good, the  
35 determination of whether any work is suitable work with respect to  
36 such individual shall be made in accordance with RCW 50.20.100.

37       (4) Extended compensation shall not be denied under subsection  
38 (1)(a) of this section to any individual for any week by reason of a  
39 failure to accept an offer of, or apply for, suitable work if:

1 (a) The gross average weekly remuneration payable to such  
2 individual for the position does not exceed the sum of—

3 (i) The individual's weekly benefit amount (as determined under  
4 RCW 50.20.120) for his or her benefit year; plus

5 (ii) The amount (if any) of supplemental unemployment  
6 compensation benefits (as defined in section 501(c)(17)(D) of the  
7 Internal Revenue Code of 1954, 26 U.S.C. Sec. 501(c)(17)(D)), payable  
8 to such individual for such week;

9 (b) The position was not offered to such individual in writing  
10 (~~and~~) or was not listed with the employment security department;

11 (c) Such failure would not result in a denial of compensation  
12 under the provisions of RCW 50.20.080 and 50.20.100 to the extent  
13 such provisions are not inconsistent with the provisions of  
14 subsections (3) and (5) of this section; or

15 (d) The position pays wages less than the higher of—

16 (i) The minimum wage provided by section (6)(a)(1) of the Fair  
17 Labor Standards Act of 1938, without regard to any exemption; or

18 (ii) Any applicable state or local minimum wage.

19 (5) For purposes of this section, an individual shall be treated  
20 as actively engaged in seeking work during any week if:

21 (a) The individual has engaged in a systematic and sustained  
22 effort to obtain work during such week; and

23 (b) The individual provides tangible evidence to the employment  
24 security department that he or she has engaged in such an effort  
25 during such week.

26 (6) The employment security department shall refer applicants for  
27 benefits under this chapter to any suitable work to which subsections  
28 (4)(a) through (4)(d) of this section would not apply.

29 (7) No provisions of this title which terminates a  
30 disqualification for voluntarily leaving employment, being discharged  
31 for misconduct, or refusing suitable employment shall apply for  
32 purposes of determining eligibility for extended compensation unless  
33 such termination is based upon employment subsequent to the date of  
34 such disqualification.

35 (8) The provisions of subsections (1) through (7) of this section  
36 shall apply with respect to weeks of unemployment beginning after  
37 March 31, 1981: PROVIDED HOWEVER, That the provisions of subsections  
38 (1) through (7) of this section shall not apply to those weeks of  
39 unemployment beginning after March 6, 1993, and before January 1,  
40 1995.



1        NEW SECTION.    **Sec. 4.**    Section 1 of this act is remedial and  
2    curative in nature and applies retroactively and prospectively to the  
3    dates listed in that section.

4        NEW SECTION.    **Sec. 5.**    This act is necessary for the immediate  
5    preservation of the public peace, health, or safety, or support of  
6    the state government and its existing public institutions, and takes  
7    effect immediately.

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