SB 5777 - S AMD **499**
By Senator Keiser

NOT CONSIDERED 03/07/2024

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 50.20.090 and 1988 c 83 s 1 are each amended to read as follows:

(1) An individual shall be disqualified for benefits for any week with respect to which the commissioner finds that the individual's unemployment is((~~:~~

~~(a) Due~~)) due to a strike at the factory, establishment, or other premises at which the individual is or was last employed((~~; or~~

~~(b) Due to a lockout by his or her employer who is a member of a multi-employer bargaining unit and who has locked out the employees at the factory, establishment, or other premises at which the individual is or was last employed after one member of the multi-employer bargaining unit has been struck by its employees as a result of the multi-employer bargaining process~~)).

(2) Subsection (1) of this section shall not apply if it is shown to the satisfaction of the commissioner that:

(a) The individual is not participating in or financing or directly interested in the strike ((~~or lockout~~)) that caused the individual's unemployment; and

(b) The individual does not belong to a grade or class of workers of which, immediately before the commencement of the strike ((~~or lockout~~)), there were members employed at the premises at which the strike ((~~or lockout~~)) occurs, any of whom are participating in or financing or directly interested in the strike ((~~or lockout~~)): PROVIDED, That if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this ((~~subdivision~~)) subsection, be deemed to be a separate factory, establishment, or other premises.

(3)(a) Any disqualification imposed under this section shall end ((~~when~~)) on the earlier of the following:

(i) The second Sunday following the first date of the strike; or

(ii) The date the strike ((~~or lockout~~)) is terminated.

(b) When the disqualification ends, the individual is subject to the one week waiting period as provided in RCW 50.20.010.

Sec. 2. RCW 50.29.021 and 2023 c 451 s 2 and 2023 c 240 s 3 are each reenacted and amended to read as follows:

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

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

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

(i) The individual qualifies for benefits under RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work;

(ii) The individual qualifies for benefits under RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through (x); or

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

(2) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers

described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

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

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

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

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

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

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

(e) Benefits paid to an individual who qualifies for benefits under RCW 50.20.050(1)(b) (iv) or (xi), (2)(b)(ii), only for separation that was necessary because the care for a child or a vulnerable adult in the claimant's care is inaccessible, (iv), (xi), (xii), or (xiii), or (3), as applicable, shall not be charged to the experience rating account of any contribution paying employer.

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

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

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

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

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

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

(k) The individual's unemployment is due to a strike at the separating employer's factory, establishment, or other premises at which the individual is or was last employed.

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

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

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

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

(iv) Continues to be employed by the employer seeking relief and: (A) The employer furnished part-time work to the individual during the base year; (B) the individual has become eligible for benefits because of loss of employment with one or more other employers; and

(C) the employer has continued to furnish or make available part-time work to the individual in substantially the same amount as during the individual's base year. This subsection does not apply to shared work employers under chapter 50.60 RCW;

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

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

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

(b) The employer requesting relief of charges under this subsection must request relief in writing within 30 days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted.

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

(5) An employer's experience rating account may not be relieved of charges for a benefit payment and an employer who reimburses the trust fund for benefit payments may not be credited for a benefit payment if a benefit payment was made because the employer or

employer's agent failed to respond timely or adequately to a written request of the department for information relating to the claim or claims without establishing good cause for the failure and the employer or employer's agent has a pattern of such failures. The commissioner has the authority to determine whether the employer has good cause under this subsection.

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

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

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

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

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

NEW SECTION. **Sec. 3.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and this finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state."

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On page 1, line 2 of the title, after "workers;" strike the remainder of the title and insert "amending RCW 50.20.090; reenacting and amending RCW 50.29.021; and creating a new section."

EFFECT: Provides that the disqualification for unemployment insurance benefits based on labor strike ends at the earlier of: The second Sunday following the first date of the strike; or the date the strike is terminated (rather than on the first Sunday following the first day of the strike, as provided in the underlying bill).

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