

---

**SUBSTITUTE SENATE BILL 5109**

---

**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Saldaña, Valdez, Dhingra, Frame, Hasegawa, Keiser, Kuderer, Liias, Lovelett, Nguyen, Nobles, Stanford, and C. Wilson)

READ FIRST TIME 02/08/23.

1 AN ACT Relating to creating a wage replacement program for  
2 certain Washington workers excluded from unemployment insurance;  
3 reenacting and amending RCW 42.56.410; adding new chapters to Title  
4 50C RCW; adding a new title to the Revised Code of Washington to be  
5 codified as Title 50C RCW; and prescribing penalties.

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

7 **GENERAL PROVISIONS**

8 NEW SECTION. **Sec. 1.** The legislature finds and declares:

9 (1) When unemployment insurance was established by the United  
10 States congress and the state legislature, the legislature explicitly  
11 recognized that economic insecurity caused by unemployment is the  
12 greatest hazard of our economic life that falls with crushing force  
13 upon the unemployed worker, which therefore requires the compulsory  
14 setting aside of unemployment reserves to reduce the suffering caused  
15 by unemployment to a minimum. Unemployment insurance is essential to  
16 ensure that individuals who lose income can survive and meet their  
17 basic needs during periods they are unable to find stable work.

18 (2) Many immigrant workers, however, are not eligible for  
19 unemployment insurance and have not received any assistance from this  
20 jointly administered state and federal insurance program. RCW

1 50.20.098 provides that unemployment insurance benefits shall not be  
2 payable unless the individual was lawfully admitted for permanent  
3 residence, was lawfully present for purposes of performing such  
4 services, or otherwise was permanently residing in the United States  
5 under color of law at the time such services were performed. Title 8  
6 U.S.C. Sec. 1621(d) requires that states wishing to extend benefits  
7 beyond a short list of qualified immigrants must affirmatively do so.  
8 Those ineligible to receive unemployment benefits include workers  
9 without work authorization, workers whose work authorization has  
10 expired or is awaiting renewal, and workers who recently regularized  
11 their immigration status.

12 (3) Ineligibility for unemployment benefits has devastated  
13 immigrant communities during the pandemic economic crisis,  
14 particularly immigrants working in low-wage industries. Several of  
15 the industries that have experienced the highest rates of job loss in  
16 Washington due to the pandemic are low-wage sectors with the highest  
17 numbers of immigrant workers including the restaurant, hotel, retail,  
18 and construction industries. Economists predict large-scale permanent  
19 job loss and long-term unemployment as the effects of the pandemic  
20 are similar to the great recession of 2008. Without access to  
21 unemployment benefits among other critical safety net programs,  
22 Washington's immigrant communities face deep economic devastation for  
23 years to come. Prior to the pandemic, the poverty rate of immigrants  
24 in Washington was already high, with 18 percent of the state's  
25 immigrant residents living in poverty compared to 12 percent of  
26 United States born residents. The crisis is expected to significantly  
27 expand this disparity.

28 (4) To support the survival of Washington's immigrant workers and  
29 families during periods of crisis, particularly low-income  
30 households, and to provide the safety net that United States born  
31 Washington residents can access, the legislature intends to establish  
32 a weekly wage replacement state program similar to the state and  
33 federal unemployment insurance program for workers who are unemployed  
34 and not eligible for the state and federal unemployment insurance.

35 NEW SECTION. **Sec. 2.** In addition to the definitions provided in  
36 this section, the definitions provided in chapter 50.04 RCW apply  
37 throughout this title unless the context clearly requires otherwise.

38 (1) "Application for initial determination" has the meaning  
39 provided in RCW 50.20.140.

1 (2) "Benefit" or "benefits" means the compensation payable to a  
2 claimant, as provided in either Title 50 RCW or this title with  
3 respect to the claimant's unemployment.

4 (3) "Claimant" means an individual applying for benefits under  
5 this title.

6 (4) "Employment" has the meaning provided in RCW 50.04.100,  
7 subject to the provisions of RCW 50.04.110, 50.04.120 through  
8 50.04.205, and 50.04.210 through 50.04.280. The provisions of RCW  
9 50.04.206 do not apply to the definition of "employment" for this  
10 title.

11 (5) (a) "Resident of the state of Washington" means a claimant who  
12 takes actions indicating they intend to live in Washington state on  
13 more than a temporary or transient basis throughout the duration of  
14 receiving benefits under this title. Unless the department has  
15 information indicating otherwise, the department must presume that a  
16 claimant is a resident of the state of Washington if the claimant:

17 (i) Maintains a residence in Washington for personal use with a  
18 utility bill showing their full name and Washington state address;

19 (ii) Lives in a motor home or vessel that is not permanently  
20 attached to any real property if the claimant previously lived in  
21 this state and does not have a permanent residence in any other  
22 state;

23 (iii) Is attending school in this state and paying tuition as a  
24 Washington resident, is a custodial parent with a child attending a  
25 public school in this state, or has correspondence from a school in  
26 this state showing their full name and Washington state address;

27 (iv) Has a Washington state identification card showing their  
28 full name and Washington state address;

29 (v) Has a current library card issued in this state;

30 (vi) Has correspondence from a community or faith-based  
31 organization in this state showing their full name and Washington  
32 state address; or

33 (vii) Has a medical document showing their full name and  
34 Washington state address.

35 (b) The actions and documentation outlined in this subsection (5)  
36 are a nonexhaustive list and the department may adopt additional  
37 methods by which a claimant may prove they are a resident of the  
38 state of Washington.

39 (6) "Wage" or "wages" has the meaning provided in RCW 50.04.320,  
40 subject to the provisions of RCW 50.04.330 through 50.04.355.

1 (7) "Week of unemployment" means any week during which a  
2 claimant, including a self-employed claimant:

3 (a) Performs no services and with respect to which no  
4 remuneration is payable to the claimant; or

5 (b) Performs less than full-time work if the remuneration payable  
6 to the claimant with respect to such week is less than one and one-  
7 third times the individual's weekly benefit amount plus \$5.00.

8 NEW SECTION. **Sec. 3.** The Washington wage replacement account is  
9 created in the custody of the state treasurer. Revenues to the  
10 account must consist of appropriations and transfers by the  
11 legislature and all other funding directed for deposit into the  
12 account. Expenditures from the account may be used only for providing  
13 benefits under this title to eligible and qualified claimants,  
14 contracting with community-based organizations to notify individuals  
15 who may be eligible for benefits under this title, and administrative  
16 expenses of the department under this act. Only the commissioner of  
17 the department or the commissioner's designee may authorize  
18 expenditures from the account. The account is subject to the  
19 allotment procedures under chapter 43.88 RCW, but an appropriation is  
20 not required for expenditures.

21 NEW SECTION. **Sec. 4.** (1) The department must appoint an  
22 advisory committee to review issues and topics of interest related to  
23 this title.

24 (2) The committee is composed of 11 members:

25 (a) Three members representing immigrants' interests;

26 (b) Two members representing workers' interests in unemployment,  
27 each of whom must be appointed from a list of names submitted by a  
28 recognized statewide organization of employees;

29 (c) Two members representing employers' interests in  
30 unemployment, each of whom must be appointed from a list of names  
31 submitted by a recognized statewide organization of employers;

32 (d) Three ex officio members, without a vote, representing the  
33 state commission on African American affairs, the state commission on  
34 Hispanic affairs, and the state commission on Asian Pacific American  
35 affairs; and

36 (e) One ex officio member, without a vote, representing the  
37 department and who will serve as the chair.

1 (3) The advisory committee must provide comment on department  
2 rule making, policies, implementation of this title, utilization of  
3 benefits under this title, and other initiatives, and study issues  
4 the advisory committee determines to require its consideration.

5 (4) The members must serve without compensation but are eligible  
6 for reimbursement of travel expenses as provided in RCW 43.03.050 and  
7 43.03.060, and for stipends provided by the department under RCW  
8 43.03.220. The advisory committee may utilize such personnel and  
9 facilities of the department as it needs, without charge. All  
10 expenses of the advisory committee must be paid by the Washington  
11 wage replacement account created in section 3 of this act.

12 **APPLICATION AND BENEFITS**

13 NEW SECTION. **Sec. 5.** Beginning January 1, 2026, a claimant is  
14 eligible to receive benefits under this title with respect to any  
15 week of unemployment in their benefit year if the department  
16 determines the following steps are satisfied in sequential order:

17 (1) The claimant files an application for initial determination  
18 of benefits under Title 50 RCW;

19 (2) The department denies the claimant's application for initial  
20 determination of benefits based on the claimant not being authorized  
21 to work in the United States at the time the work was performed or  
22 during the week for which the claimant is applying for unemployment  
23 benefits under Title 50 RCW;

24 (3) After a denial under subsection (2) of this section, the  
25 department invites the claimant to apply for benefits under this  
26 title; and

27 (4) The claimant meets the eligibility and qualification  
28 requirements under sections 6 and 7 of this act.

29 NEW SECTION. **Sec. 6.** To be eligible for benefits under this  
30 title, a claimant invited by the department to apply for benefits  
31 under section 5 of this act must then satisfy the steps in this  
32 section.

33 (1) The claimant must file an initial application for benefits  
34 under this title with the department, which includes information or  
35 documentation verifying the claimant:

36 (a) Is a resident of the state of Washington and has sufficient  
37 photographic identification confirming their identity;

1 (b) Worked 680 hours in employment in their base year or earned  
2 wages during their base year equal to 680 times the minimum wage set  
3 by RCW 49.46.020 in effect during the first quarter of the claimant's  
4 base year;

5 (c) Is unemployed through no fault of their own; and

6 (d) Has been unemployed for a waiting period of one week.

7 (2) If the claimant's wages are not verified by employer reports  
8 to the department under subsection (1)(b) of this section, the  
9 department must request additional information or documentation from  
10 the claimant verifying the claimant earned wages during their base  
11 year equal to 680 times the minimum wage set by RCW 49.46.020 in  
12 effect during the first quarter of the claimant's base year. If,  
13 after the department's request, the claimant fails to provide  
14 sufficient information or documentation, the claimant may be denied  
15 benefits under this title.

16 (3) The department may request information or documentation from  
17 the claimant's former employers to verify the circumstances under  
18 which the claimant separated from employment when determining the  
19 eligibility standard under subsection (1)(c) of this section. If an  
20 employer fails to respond to a request under this subsection (3), the  
21 department must consider the eligibility standard under subsection  
22 (1)(c) of this section satisfied unless the department has  
23 independent, verified information indicating the claimant failed to  
24 satisfy the eligibility standard.

25 (4) The department may contract with a third-party, community-  
26 based organization to assist claimants in gathering information or  
27 documentation required under this section.

28 (5) The department must make the final decision on whether the  
29 claimant is eligible for benefits under this title. The department  
30 may utilize information or documentation provided by the claimant or  
31 any third-party, community-based organization contracted under this  
32 section.

33 NEW SECTION. **Sec. 7.** (1) If the department determines the  
34 claimant is eligible for benefits under this title, the claimant may  
35 qualify for weekly benefits by self-attesting, in a form and manner  
36 adopted in rule by the department, that the claimant meets the  
37 following requirements for each week of unemployment in which the  
38 claimant is applying for benefits under this title:

1 (a) The claimant must be actively seeking work in any trade,  
2 occupation, profession, or business for which the claimant is  
3 reasonably fitted; and

4 (b) The claimant must report to the department any wages or  
5 remuneration the claimant received.

6 (2) For the purposes of this section, "actively seeking work"  
7 means participating in job search, educational, or professional  
8 development activities adopted in rule by the department. In  
9 developing these activities, the department must consider the unique  
10 circumstances of a claimant under this title.

11 (3) The department may conduct random audits to confirm the  
12 claimant's job search, educational, or professional development  
13 activities, and current unemployment status.

14 NEW SECTION. **Sec. 8.** (1) A claimant who is eligible and  
15 qualified for benefits under this title must receive a weekly benefit  
16 amount equal to the weekly benefit amount calculated in RCW  
17 50.20.120.

18 (2) Benefits must be payable to any eligible and qualified  
19 claimant during the claimant's benefit year in a maximum amount equal  
20 to the lesser of 26 times the weekly benefit amount, as determined  
21 under subsection (1) of this section, or one-third of the claimant's  
22 base year wages under this title.

23 NEW SECTION. **Sec. 9.** A determination of the amount of benefits  
24 potentially payable under this title must not serve as a basis for  
25 appeal but must be subject to request by the claimant for  
26 reconsideration or redetermination by the department at any time  
27 within one year of the date of delivery or mailing of such  
28 determination, or any such redetermination.

29 NEW SECTION. **Sec. 10.** (1) If waiting period credit or the  
30 payment of benefits under this title are denied to any claimant for  
31 any week or weeks, the claimant must be promptly issued written  
32 notice of the denial and reasons for such denial.

33 (2) If the department believes the claimant's right to waiting  
34 period credit or benefits under this title is at issue because of the  
35 claimant's separation from work for any reason other than lack of  
36 work, the department must promptly issue a determination of allowance

1 or denial of waiting period credit or benefits under this title and  
2 the reasons for such allowance or denial to the claimant.

3 (3) Notice that the waiting period credit or benefits under this  
4 title allowed or denied must suffice for the particular weeks stated  
5 in the notice or until the condition upon which the allowance or  
6 denial was based has been changed.

7 NEW SECTION. **Sec. 11.** (1) A claimant is disqualified for  
8 benefits under this title:

9 (a) If the department finds that a claimant:

- 10 (i) Left their most recent work voluntarily without good cause;  
11 (ii) Was discharged for misconduct or gross misconduct connected  
12 with their most recent work; or  
13 (iii) Knowingly made a false statement or representation  
14 involving a material fact or knowingly failed to report a material  
15 fact and, as a result, has obtained or attempted to obtain any  
16 benefits under this title; or

17 (b) For any week a claimant has received, is receiving, or will  
18 receive compensation, as determined by the governing state or federal  
19 agency under:

- 20 (i) Title 50 RCW;  
21 (ii) Title 50A RCW;  
22 (iii) RCW 51.32.060;  
23 (iv) RCW 51.32.090; or  
24 (v) Any other applicable federal unemployment compensation,  
25 industrial insurance, or state disability insurance laws.

26 (2) In making the determination under subsection (1) of this  
27 section, the department must use the provisions of RCW 50.20.050,  
28 50.20.066, 50.20.070, and 50.20.085 as a guide while accounting for  
29 the unique circumstances of a claimant under this title.

30 (3) Cessation of operations by an employer for the purpose of  
31 granting vacations, whether by union contract or other reasons, must  
32 not be construed to be a voluntary quit or a voluntary unemployment  
33 on the part of the claimant.

34 (4) Durations of disqualifications in subsection (1) of this  
35 section must conform to comparable durations provided in RCW  
36 50.20.050, 50.20.066, 50.20.070, and 50.20.085.

37 NEW SECTION. **Sec. 12.** (1) Benefits are due and payable under  
38 this title only to the extent provided in this title and to the



1 extent that moneys are available in the Washington wage replacement  
2 account created in section 3 of this act.

3 (2) Neither the department nor the state are liable for any  
4 amount exceeding such sums.

5 **PRIVACY AND CONFIDENTIALITY**

6 NEW SECTION. **Sec. 13.** (1) If information provided to the  
7 department by another governmental agency is held private and  
8 confidential by state or federal laws, the department may not release  
9 such information.

10 (2) Information provided to the department by another  
11 governmental entity conditioned upon the privacy and confidentiality  
12 is to be held private and confidential according to the agreement  
13 between the department and other governmental entity.

14 (3) The department may hold private and confidential information  
15 obtained for statistical analysis, research, or study purposes if the  
16 information was supplied voluntarily, conditioned upon maintaining  
17 confidentiality of the information.

18 (4) Persons requesting disclosure of information held by the  
19 department under subsection (1) or (2) of this section must request  
20 such disclosure from the agency providing the information to the  
21 department rather than from the department.

22 NEW SECTION. **Sec. 14.** Any information or records concerning a  
23 claimant or employing unit obtained by the department pursuant to the  
24 administration of this title must be private and confidential, except  
25 as otherwise provided in this chapter. This chapter does not create a  
26 rule of evidence. Information or records may only be released by the  
27 department when the release is:

28 (1) To the person who is the subject of such records or an  
29 authorized representative;

30 (2) Necessary to comply with a lawful court order, judicial  
31 warrant signed by a judge appointed pursuant to Article III of the  
32 United States Constitution, or judicial subpoena for specific records  
33 issued pursuant to the criminal procedure law or the civil practice  
34 law and rules; or

35 (3) Disclosed in a manner that could not be used to determine the  
36 identities of the claimants or employers to whom the data pertains,  
37 alone or in combination with other data.

1        NEW SECTION.    **Sec. 15.**    (1) In administering the program under  
2 this title, the department is prohibited from taking any of the  
3 following actions:

4        (a) Soliciting from the claimant, orally or in written form, a  
5 claimant's nationality, race, ethnicity, place of birth, citizenship,  
6 or immigration status;

7        (b) Indicating in its records which documents the claimant used  
8 to prove their age or identity;

9        (c) Compelling a claimant to admit in writing whether they have  
10 proof of lawful presence in the United States or to explain why they  
11 are ineligible for a social security number;

12       (d) Contacting a claimant's current, former, or prospective  
13 employers including, but not limited to, for the purposes of  
14 verifying employment status, except as authorized in section 6(3) of  
15 this act; and

16       (e) Attempting to ascertain a claimant's immigration or  
17 citizenship status, except to determine whether a claimant is  
18 excluded from benefits under Title 50 RCW and potentially eligible  
19 for benefits under this title.

20       (2) Except as the department determines necessary to comply with  
21 other legal requirements, the department must destroy all records  
22 containing information that were provided by a claimant or collected  
23 by the department to verify eligibility for the program within 15  
24 days of a claimant's written statement that they are no longer using  
25 the program.

26       (3) As provided in RCW 42.56.410, any information under this  
27 title is not a public record and must not be disclosed or otherwise  
28 made accessible in response to any request for records except:

29       (a) To the person who is the subject of such records or an  
30 authorized representative;

31       (b) Where necessary to comply with a lawful court order, judicial  
32 warrant signed by a judge appointed pursuant to Article III of the  
33 United States Constitution, or judicial subpoena for individual  
34 records issued pursuant to the criminal procedure law or the civil  
35 practice law and rules; or

36       (c) If disclosed in a manner that could not be used to determine  
37 the identities of the claimants or employers to whom the data  
38 pertains, alone or in combination with other data.

39       (4) For the purposes of this section, whenever a lawful court  
40 order, judicial warrant, or judicial subpoena for individual records

1 properly issued pursuant to the criminal procedure law or the civil  
2 practice law and rules is presented to a court, only those records,  
3 documents, and information specifically sought by such court order,  
4 warrant, or subpoena may be disclosed.

5 (5) Notwithstanding any other law, information and records  
6 containing information that are collected or obtained by the state,  
7 any state agency, or any subdivision of the state, including agents  
8 of the state universities and community colleges, in addition to any  
9 private persons contracted to administer public services or programs,  
10 must only be collected, used, and retained for the purpose of  
11 assessing eligibility for and providing those public services and  
12 programs created by this title.

13 (6) No information collected under this title may be used for  
14 purposes of investigating, locating, or apprehending claimants for  
15 immigration-related violations including, but not exclusive to,  
16 queries or inquiries under 8 U.S.C. Secs. 1324, 1325, and 1326.

17 (7) In carrying out the program created under this title, the  
18 department must establish prohibitions and safeguards against  
19 unauthorized access to, and use of, any information collected under  
20 this title by private or public entities. For the purposes of this  
21 subsection, "unauthorized access" includes, but is not limited to,  
22 access by anyone other than a claimant, an employee of the  
23 department, the office of administrative hearings, the department of  
24 enterprise services, or their successor agencies.

25 (8) The department may use state and local databases to exclude  
26 claimants who may be eligible for unemployment insurance benefits  
27 under Title 50 RCW or are otherwise ineligible or disqualified. An  
28 absence of information contained in state and local databases must  
29 not be a factor, by itself, to deny a claimant benefits under this  
30 title.

31 **Sec. 16.** RCW 42.56.410 and 2019 c 81 s 10 and 2019 c 13 s 68 are  
32 each reenacted and amended to read as follows:

33 The following information related to employment security is  
34 exempt from disclosure under this chapter:

35 (1) Records maintained by the employment security department and  
36 subject to chapter 50.13 or 50A.25 RCW if provided to another  
37 individual or organization for operational, research, or evaluation  
38 purposes (~~(are exempt from disclosure under this chapter; and)~~);

1 (2) Any inventory or data map records created under RCW  
2 50.13.120(1)(b) that reveal the location of personal information or  
3 the extent to which it is protected; and

4 (3) Any information or records maintained by the employment  
5 security department pursuant to Title 50C RCW (the new title created  
6 in section 27 of this act), except:

7 (a) To the person who is the subject of such records or an  
8 authorized representative;

9 (b) Where necessary to comply with a lawful court order, judicial  
10 warrant signed by a judge appointed pursuant to Article III of the  
11 United States Constitution, or judicial subpoena for individual  
12 records issued pursuant to the criminal procedure law or the civil  
13 practice law and rules; or

14 (c) If disclosed in a manner that could not be used to determine  
15 the identities of the claimants or employers to whom the data  
16 pertains, alone or in combination with other data.

#### 17 MISCELLANEOUS PROVISIONS

18 NEW SECTION. Sec. 17. The department must establish a procedure  
19 for review, hearings, and appeals under this title comparable to the  
20 provisions of chapter 50.32 RCW, which complies with the  
21 confidentiality and privacy protections under sections 13 through 16  
22 of this act.

23 NEW SECTION. Sec. 18. (1) The department must create a process  
24 by which claimants can notify it of payment errors and for collection  
25 and forgiveness of such overpayments. In developing this process, the  
26 department must use the provisions of RCW 50.20.190 as a guide and is  
27 granted the same authority as provided in RCW 50.20.190(3).

28 (2) The department must create a process by which potential fraud  
29 can be reported.

30 (3) The penalties provided in RCW 50.36.010 apply to fraudulent  
31 activities under this title.

32 NEW SECTION. Sec. 19. Any assignment, pledge, or encumbrance of  
33 any right to benefits under this title which are or may become due or  
34 payable under this title must be void. Such rights to benefits under  
35 this title must be exempt from levy, execution, attachment, or any  
36 other remedy whatsoever provided for the collection of debts.

1 Benefits under this title received by any individual, so long as they  
2 are not commingled with other funds of the recipient, must be exempt  
3 from any remedy whatsoever for collection of all debts except debts  
4 incurred for necessities furnished to such individual or their spouse  
5 or dependents during the time when such individual was unemployed.  
6 Any waiver of any exemption provided for in this section must be  
7 void. Any agreement by an individual to waive, release, or commute  
8 their rights to benefits or any other rights under this title must be  
9 void.

10 NEW SECTION. **Sec. 20.** The legislature reserves the right to  
11 amend or repeal all or any part of this title at any time; and there  
12 must be no vested private right of any kind against such amendment or  
13 repeal. All the rights, privileges, or immunities conferred by this  
14 title or by acts done pursuant thereto must exist subject to the  
15 power of the legislature to amend or repeal this title at any time.

16 NEW SECTION. **Sec. 21.** The department must adopt rules as  
17 necessary to implement this title.

18 NEW SECTION. **Sec. 22.** If any provision of this act or its  
19 application to any person or circumstance is held invalid, the  
20 remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 23.** Sections 1 through 4 of this act  
23 constitute a new chapter in Title 50C RCW (the new title created in  
24 section 27 of this act).

25 NEW SECTION. **Sec. 24.** Sections 5 through 12 of this act  
26 constitute a new chapter in Title 50C RCW (the new title created in  
27 section 27 of this act).

28 NEW SECTION. **Sec. 25.** Sections 13 through 15 of this act  
29 constitute a new chapter in Title 50C RCW (the new title created in  
30 section 27 of this act).

31 NEW SECTION. **Sec. 26.** Sections 17 through 20 of this act  
32 constitute a new chapter in Title 50C RCW (the new title created in  
33 section 27 of this act).

1        NEW SECTION.    **Sec. 27.**    Sections 1 through 15 and 17 through 21  
2 of this act constitute a new title in the Revised Code of Washington,  
3 to be codified as Title 50C RCW.

--- END ---