
SENATE BILL 5176

State of Washington

68th Legislature

2023 Regular Session

By Senators Stanford, Billig, Keiser, and Van De Wege

Prefiled 01/05/23. Read first time 01/09/23. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to unemployment insurance benefits for officers
2 of employee-owned cooperatives; amending RCW 50.24.160, 50.04.165,
3 and 50.04.310; adding a new section to chapter 50.04 RCW; creating a
4 new section; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 50.04
7 RCW to read as follows:

8 "Employee-owned cooperative" means a cooperative organized under
9 chapter 23.78, 23.86, or 23.100 RCW where the employees own the
10 majority of the shares or stock or are the majority of the members in
11 the cooperative.

12 **Sec. 2.** RCW 50.24.160 and 2013 c 75 s 1 are each amended to read
13 as follows:

14 (1) Except as provided in RCW 50.04.165, any employing unit for
15 which services that do not constitute employment as defined in this
16 title are performed may file with the commissioner a written election
17 that all such services performed by any distinct class or group of
18 individuals or by all individuals in its employment in one or more
19 distinct establishments or places of business shall be deemed to
20 constitute employment for all the purposes of this title for at least

1 two calendar years. Upon the written approval of such election by the
2 commissioner, such services shall be deemed to constitute employment
3 subject to this title on and after the date stated in the approval.
4 Services covered under this section shall cease to be deemed
5 employment as of January 1st of any calendar year subsequent to the
6 two((-))calendar year period, only if the employing unit files with
7 the commissioner before January 15th of that year a written
8 application for termination of coverage. Services for which an
9 employing unit may elect coverage include, but are not limited to,
10 maritime service as described in RCW 50.04.170.

11 (2) An employee-owned cooperative employing unit may file with
12 the commissioner a written election that all such services performed
13 by its corporate officers be deemed not to constitute employment for
14 all the purposes of this title for at least two calendar years. Upon
15 the written approval of such election by the commissioner, such
16 services shall be deemed not to constitute employment subject to this
17 title on and after the date stated in the approval. Services covered
18 under this section will be deemed employment as of January 1st of any
19 calendar year after the two calendar year period, only if the
20 employing unit files with the commissioner before January 15th of
21 that year a written application for election of coverage.

22 **Sec. 3.** RCW 50.04.165 and 2013 c 250 s 2 are each amended to
23 read as follows:

24 ((Services)) (1)(a) Except as provided in subsection (2) of this
25 section, services performed by a person appointed as an officer of a
26 corporation under RCW 23B.08.400, other than those covered by
27 chapters 50.44 and 50.50 RCW, shall not be considered services in
28 employment.

29 (b) However, a corporation may elect to cover not less than all
30 of its corporate officers under RCW 50.24.160. If an employer does
31 not elect to cover its corporate officers under RCW 50.24.160, the
32 employer must notify its corporate officers in writing that they are
33 ineligible for unemployment benefits. However, if the employer fails
34 to provide notice, the individual's status as a corporate officer is
35 unchanged and the person remains ineligible for unemployment
36 benefits.

37 (2)(a) Subsection (1)(a) of this section does not apply to
38 persons appointed as officers of an employee-owned cooperative unless

1 the employee-owned cooperative elects not to cover all of its
2 corporate officers under RCW 50.24.160.

3 (b) If an employee-owned cooperative elects not to cover its
4 corporate officers under RCW 50.24.160, the employer must notify its
5 corporate officers in writing that they are ineligible for
6 unemployment benefits. However, if the employer fails to provide
7 notice, the individual's status as a corporate officer is unchanged
8 and the person remains ineligible for unemployment benefits.

9 **Sec. 4.** RCW 50.04.310 and 2013 c 66 s 1 are each amended to read
10 as follows:

11 (1) An individual:

12 (a) Is "unemployed" in any week during which the individual
13 performs no services and with respect to which no remuneration is
14 payable to the individual, or in any week of less than full time
15 work, if the remuneration payable to the individual with respect to
16 such week is less than one and one-third times the individual's
17 weekly benefit amount plus five dollars. The commissioner shall
18 prescribe regulations applicable to unemployed individuals making
19 such distinctions in the procedures as to such types of unemployment
20 as the commissioner deems necessary.

21 (b) Is not "unemployed" in any week which falls totally within a
22 period during which the individual, pursuant to a collective
23 bargaining agreement or individual employment contract, is employed
24 full time in accordance with a definition of full time contained in
25 the agreement or contract, and for which compensation for full time
26 work is payable. This subsection may not be applied retroactively to
27 an individual who had no guarantee of work at the start of such
28 period and subsequently is provided additional work by the employer.

29 (2) (a) An officer of a corporation who owns ten percent or more
30 of the outstanding stock of the corporation, or a corporate officer
31 who is a family member of an officer who owns ten percent or more of
32 the outstanding stock of the corporation, whose claim for benefits is
33 based on any wages with that corporation:

34 (i) Is not "unemployed" in any week during the individual's term
35 of office or ownership in the corporation, even if wages are not
36 being paid, unless the corporate officer's covered base year wages
37 with that corporation are less than twenty-five percent of his or her
38 total covered base year wages.

1 (ii) Is "unemployed" in any week upon dissolution of the
2 corporation or if the officer permanently resigns or is permanently
3 removed from their appointment and responsibilities with that
4 corporation in accordance with its articles of incorporation or
5 bylaws or if the corporate officer's covered base year wages with
6 that corporation are less than twenty-five percent of his or her
7 total covered base year wages.

8 (b) As used in this subsection (2), "family member" means persons
9 who are members of a family by blood or marriage as parents,
10 stepparents, grandparents, spouses, children, brothers, sisters,
11 stepchildren, adopted children, or grandchildren.

12 (3) Subsection (2)(a) of this section does not apply to corporate
13 officers of an employee-owned cooperative. For purposes of subsection
14 (1)(a) of this section, a covered corporate officer of an employee-
15 owned cooperative will not be considered to be performing services by
16 acting only as a corporate officer of an employee-owned cooperative.

17 NEW SECTION. Sec. 5. If any part of this act is found to be in
18 conflict with federal requirements that are a prescribed condition to
19 the allocation of federal funds to the state or the eligibility of
20 employers in this state for federal unemployment tax credits, the
21 conflicting part of this act is inoperative solely to the extent of
22 the conflict, and the finding or determination does not affect the
23 operation of the remainder of this act. Rules adopted under this act
24 must meet federal requirements that are a necessary condition to the
25 receipt of federal funds by the state or the granting of federal
26 unemployment tax credits to employers in this state.

27 NEW SECTION. Sec. 6. This act takes effect January 1, 2024.

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