
SENATE BILL 5041

State of Washington

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By Senators Riccelli, Conway, Hasegawa, Saldaña, Salomon, Stanford, Dhingra, Nobles, Trudeau, Valdez, Bateman, Lovelett, Cleveland, Frame, Orwall, Pedersen, Slatter, Wellman, and C. Wilson

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1 AN ACT Relating to unemployment insurance benefits for striking
2 or lockout workers; amending RCW 50.20.090, 50.20.160, and 50.29.021;
3 adding a new section to chapter 50.20 RCW; and creating a new
4 section.

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

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

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

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

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

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

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

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

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

16 (i) The second Sunday following the first date of the strike,
17 provided that the strike is not found to be prohibited by federal or
18 state law in a final judgment. If a final judgment finds that a
19 strike is prohibited by state or federal law, any benefits paid are
20 liable for repayment as set forth in RCW 50.20.190; or

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

22 (b) When the disqualification ends, the individual is subject to
23 the one week waiting period as provided in RCW 50.20.010 and any
24 benefits must be calculated in accordance with this chapter.

25 **Sec. 2.** RCW 50.20.160 and 2003 2nd sp.s. c 4 s 31 are each
26 amended to read as follows:

27 (1) A determination of amount of benefits potentially payable
28 issued pursuant to the provisions of RCW 50.20.120 and 50.20.140
29 shall not serve as a basis for appeal but shall be subject to request
30 by the claimant for reconsideration and/or for redetermination by the
31 commissioner at any time within one year from the date of delivery or
32 mailing of such determination, or any redetermination thereof:
33 PROVIDED, That in the absence of fraud or misrepresentation on the
34 part of the claimant, any benefits paid prior to the date of any
35 redetermination which reduces the amount of benefits payable shall
36 not be subject to recovery under the provisions of RCW 50.20.190. A
37 denial of a request to reconsider or a redetermination shall be
38 furnished the claimant in writing and provide the basis for appeal
39 under the provisions of RCW 50.32.020.

1 (2) A determination of denial of benefits issued under the
2 provisions of RCW 50.20.180 shall become final, in absence of timely
3 appeal therefrom: PROVIDED, That the commissioner may reconsider and
4 redetermine such determinations at any time within one year from
5 delivery or mailing to correct an error in identity, omission of
6 fact, or misapplication of law with respect to the facts.

7 (3) A determination of allowance of benefits shall become final,
8 in absence of a timely appeal therefrom: PROVIDED, That the
9 commissioner may redetermine such allowance at any time within two
10 years following the benefit year in which such allowance was made in
11 order to recover any benefits improperly paid and for which recovery
12 is provided under the provisions of RCW 50.20.190: AND PROVIDED
13 FURTHER, That in the absence of fraud, misrepresentation, or
14 nondisclosure, this provision or the provisions of RCW 50.20.190
15 shall not be construed so as to permit redetermination or recovery of
16 an allowance of benefits which having been made after consideration
17 of the provisions of RCW 50.20.010(1)(c), or the provisions of RCW
18 50.20.050, 50.20.060, or 50.20.080(~~(, or 50.20.090)~~) has become
19 final.

20 (4) A redetermination may be made at any time: (a) To conform to
21 a final court decision applicable to either an initial determination
22 or a determination of denial or allowance of benefits; (b) in the
23 event of a back pay award or settlement affecting the allowance of
24 benefits; or (c) in the case of fraud, misrepresentation, or willful
25 nondisclosure. Written notice of any such redetermination shall be
26 promptly given by mail or delivered to such interested parties as
27 were notified of the initial determination or determination of denial
28 or allowance of benefits and any new interested party or parties who,
29 pursuant to such regulation as the commissioner may prescribe, would
30 be an interested party.

31 **Sec. 3.** RCW 50.29.021 and 2024 c 51 s 1 are each amended to read
32 as follows:

33 (1)(a) An experience rating account shall be established and
34 maintained for each employer, except employers as described in RCW
35 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
36 payments in lieu of contributions, taxable local government employers
37 as described in RCW 50.44.035, and those employers who are required
38 to make payments in lieu of contributions, based on existing records
39 of the employment security department.

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

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

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

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

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

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

25 (2) The legislature finds that certain benefit payments, in whole
26 or in part, should not be charged to the experience rating accounts
27 of employers except those employers described in RCW 50.44.010,
28 50.44.030, and 50.50.030 who have properly elected to make payments
29 in lieu of contributions, taxable local government employers
30 described in RCW 50.44.035, and those employers who are required to
31 make payments in lieu of contributions, as follows in (a) through (i)
32 of this subsection. The department may not require an employer to
33 submit a request in order for these benefits to not be charged.

34 (a) Benefits paid to any individual later determined to be
35 ineligible for those benefits or disqualified to receive those
36 benefits shall not be charged to the experience rating account of any
37 contribution paying employer, except:

38 (i) As provided in subsection (4) of this section; or

39 (ii) As provided in subsection (5) of this section.

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

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

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

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

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

17 (e) If the department determines an individual left the employ of
18 the separating employer under the circumstances described in RCW
19 50.20.050(1)(b) (iv) or (xi), (2)(b)(ii), only for separation that
20 was necessary because the care for a child or a vulnerable adult in
21 the claimant's care is inaccessible, (iv), (xi), (xii), or (xiii), or
22 (3), as applicable, benefits paid to that individual shall not be
23 charged to the experience rating account of any base year
24 contribution paying employer.

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

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

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

37 (ii) In the event the one week waiting period is partially paid
38 or partially reimbursed by the federal government, the department
39 may, by rule, elect to not charge, in full or in part, benefits paid

1 during the one week waiting period to the experience rating account
2 of any contribution paying employer.

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

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

12 (i) Last left the employ of such employer voluntarily for reasons
13 not attributable to the employer. In addition to other circumstances
14 identified by the department by rule, an individual who leaves the
15 employ of such employer under the circumstances described in RCW
16 50.20.050(1)(b) (iv) or (xi), (2)(b) (iv), (xi), or (xii), or (3)
17 must be deemed to have left their employ for reasons not attributable
18 to the employer;

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

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

29 (iv) Continues to be employed by the employer seeking relief and:
30 (A) The employer furnished part-time work to the individual during
31 the base year; (B) the individual has become eligible for benefits
32 because of loss of employment with one or more other employers; and
33 (C) the employer has continued to furnish or make available part-time
34 work to the individual in substantially the same amount as during the
35 individual's base year. This subsection does not apply to shared work
36 employers under chapter 50.60 RCW;

37 (v) Was hired to replace an employee who is a member of the
38 military reserves or National Guard and was called to federal active
39 military service by the president of the United States and is
40 subsequently laid off when that employee is reemployed by their

1 employer upon release from active duty within the time provided for
2 reemployment in RCW 73.16.035;

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

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

11 (b) The employer requesting relief of charges under this
12 subsection must request relief in writing within 30 days following
13 mailing to the last known address of the notification of the valid
14 initial determination of such claim, stating the date and reason for
15 the separation or the circumstances of continued employment. The
16 department may waive this time limitation for good cause. The
17 commissioner, upon investigation of the request, shall determine
18 whether relief should be granted.

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

30 (5) An employer's experience rating account may not be relieved
31 of charges for a benefit payment and an employer who reimburses the
32 trust fund for benefit payments may not be credited for a benefit
33 payment if a benefit payment was made because the employer or
34 employer's agent failed to respond timely or adequately to a written
35 request of the department for information relating to the claim or
36 claims without establishing good cause for the failure and the
37 employer or employer's agent has a pattern of such failures. The
38 commissioner has the authority to determine whether the employer has
39 good cause under this subsection.

1 (a) For the purposes of this subsection, "adequately" means
2 providing accurate information of sufficient quantity and quality
3 that would allow a reasonable person to determine whether an
4 individual is eligible for or qualified to receive benefits.

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

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

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

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

17 NEW SECTION. **Sec. 4.** A new section is added to chapter 50.20
18 RCW to read as follows:

19 If an individual receives benefits under this title while being
20 unemployed due to a strike at the separating employer's factory,
21 establishment, or other premises and the individual subsequently
22 receives retroactive wages from the separating employer for any week
23 for which he or she received benefits under this title, the
24 department shall issue an overpayment assessment to recover the
25 corresponding benefits as provided under RCW 50.20.190.

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

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