

Chapter 50A.45 RCW
LIMITATIONS, DISQUALIFICATIONS, PENALTIES, AND INTEREST

Sections

50A.45.010	Employer penalties.
50A.45.015	Delinquency—Order and notice of assessment.
50A.45.020	Jeopardized collection—Immediate assessment.
50A.45.025	Delinquency—Accrual of interest.
50A.45.030	Collection by distraint, seizure, and sale.
50A.45.035	Collection by distraint, seizure, and sale—Procedure.
50A.45.040	Notice and order to withhold and deliver.
50A.45.045	Warrant for assessment.
50A.45.050	Liens.
50A.45.055	Liens—Insolvency, dissolution, or distribution of assets.
50A.45.060	Civil actions—Service of process.
50A.45.065	Injunction from continuing in business.
50A.45.070	Compromise of claims.
50A.45.075	Uncollectible accounts.

RCW 50A.45.010 Employer penalties. (1) An employer who willfully fails to make the required reports is subject to penalties as follows: (a) For the second occurrence, the penalty is seventy-five dollars; (b) for the third occurrence, the penalty is one hundred fifty dollars; and (c) for the fourth occurrence and for each occurrence thereafter, the penalty is two hundred fifty dollars.

(2) An employer who willfully fails to remit the full amount of the premiums when due is liable, in addition to the full amount of premiums due and amounts assessed as interest under RCW 50A.45.025, to a penalty equal to the premiums and interest.

(3) Any penalties under this section shall be deposited into the family and medical leave enforcement account.

(4) For the purposes of this section, "willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

(5) The department shall enforce the collection of penalties through conference and conciliation.

(6) These penalties may be appealed as provided in RCW 50A.50.010 through 50A.50.200. [2019 c 13 s 16; 2017 3rd sp.s. c 5 s 68. Formerly RCW 50A.04.090.]

RCW 50A.45.015 Delinquency—Order and notice of assessment. At any time after the commissioner shall find that any premiums, interest, or penalties have become delinquent, the commissioner may issue an order and notice of assessment specifying the amount due, which order and notice of assessment shall be served upon the delinquent employer in the manner prescribed for the service of a summons in a civil action, or using a method by which the mailing can be tracked or the delivery can be confirmed. Failure of the employer to receive such notice or order whether served or mailed shall not release the employer from any tax, or any interest or penalties thereon. [2017 3rd sp.s. c 5 s 58. Formerly RCW 50A.04.130.]

RCW 50A.45.020 Jeopardized collection—Immediate assessment. If the commissioner has reason to believe that an employer is insolvent or if any reason exists why the collection of any premiums accrued will be jeopardized by delaying collection, he or she may make an immediate assessment thereof and may proceed to enforce collection immediately, but interest and penalties shall not begin to accrue upon any premiums until the date when such premiums would normally have become delinquent. [2017 3rd sp.s. c 5 s 59. Formerly RCW 50A.04.135.]

RCW 50A.45.025 Delinquency—Accrual of interest. If premiums are not paid on the date on which they are due and payable as prescribed by the commissioner, the whole or part thereof remaining unpaid shall bear interest at the rate of one percent per month or fraction thereof from and after such date until payment plus accrued interest is received by him or her. The date as of which payment of premiums, if mailed, is deemed to have been received may be determined by such regulations as the commissioner may prescribe. Interest collected pursuant to this section shall be paid into the family and medical leave enforcement account. Interest shall not accrue on premiums from any estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer qualifies as such, but premiums accruing with respect to employment of persons by any receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer shall become due and shall draw interest in the same manner as premiums due from other employers. Where adequate information has been furnished to the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, interest may be waived. [2017 3rd sp.s. c 5 s 55. Formerly RCW 50A.04.140.]

RCW 50A.45.030 Collection by distraint, seizure, and sale. If the amount of premiums, interest, or penalties assessed by the commissioner by order and notice of assessment provided in this title is not paid within ten days after the service or mailing of the order and notice of assessment, the commissioner or his or her duly authorized representative may collect the amount stated in said assessment by the distraint, seizure, and sale of the property, goods, chattels, and effects of said delinquent employer. There shall be exempt from distraint and sale under this section such goods and property as are exempt from execution under the laws of this state. [2019 c 13 s 24; 2017 3rd sp.s. c 5 s 60. Formerly RCW 50A.04.145.]

RCW 50A.45.035 Collection by distraint, seizure, and sale—Procedure. The commissioner, upon making a distraint, shall seize the property and shall make an inventory of the property distrained, a copy of which shall be mailed to the owner of such property or personally delivered to him or her, and shall specify the time and place when said property shall be sold. A notice specifying the property to be sold and the time and place of sale shall be posted in

at least two public places in the county wherein the seizure has been made. The time of sale shall be not less than ten nor more than twenty days from the date of posting of such notices. Said sale may be adjourned from time to time at the discretion of the commissioner, but not for a time to exceed in all sixty days. Said sale shall be conducted by the commissioner or his or her authorized representative who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the commissioner or his or her representative may declare such property to be purchased by the employment security department for such minimum price. In such event the delinquent account shall be credited with the amount for which the property has been sold. Property acquired by the employment security department as herein prescribed may be sold by the commissioner or his or her representative at public or private sale, and the amount realized shall be placed in the family and medical leave account. In all cases of sale, as aforesaid, the commissioner shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the commissioner to make such sale and conclusive evidence of the regularity of his or her proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the delinquent employer in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the employment security department, shall be first applied by the commissioner in satisfaction of the delinquent account, and out of any sum received in excess of the amount of delinquent premiums, interest, and penalties the administration fund shall be reimbursed for the costs of distraint and sale. Any excess which shall thereafter remain in the hands of the commissioner shall be refunded to the delinquent employer. Sums so refundable to a delinquent employer may be subject to seizure or distraint in the hands of the commissioner by any other taxing authority of the state or its political subdivisions. [2017 3rd sp.s. c 5 s 61. Formerly RCW 50A.04.150.]

RCW 50A.45.040 Notice and order to withhold and deliver. The commissioner is hereby authorized to issue to any person, firm, corporation, political subdivision, or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when the commissioner has reason to believe that there is in the possession of such person, firm, corporation, political subdivision, or department, property which is due, owing, or belonging to any person, firm, or corporation upon whom the department has served a benefit overpayment assessment or a notice and order of assessment for premiums, interest, or penalties. The effect of a notice to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability is satisfied or becomes unenforceable because of a lapse of time. The notice and order to withhold and deliver shall be served by the sheriff or the sheriff's deputy of the county wherein the service is made, using a method by which the mailing can be tracked or the delivery can be confirmed, or by any duly authorized representative of the commissioner. Any person, firm, corporation, political subdivision, or department upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day

of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice. In the event there is in the possession of any such person, firm, corporation, political subdivision, or department, any property which may be subject to the claim of the employment security department of the state, such property shall be delivered forthwith to the commissioner or the commissioner's duly authorized representative upon demand to be held in trust by the commissioner for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability, or in the alternative, there shall be furnished a good and sufficient bond satisfactory to the commissioner conditioned upon final determination of liability. Should any person, firm, or corporation fail to make answer to an order to withhold and deliver within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against such person, firm, or corporation for the full amount claimed by the commissioner in the notice to withhold and deliver, together with costs. [2017 3rd sp.s. c 5 s 62. Formerly RCW 50A.04.155.]

RCW 50A.45.045 Warrant for assessment. Whenever any order and notice of assessment or jeopardy assessment has become final in accordance with the provisions of this title the commissioner may file with the clerk of any county within the state a warrant in the amount of the notice of assessment plus interest, penalties, and a filing fee under RCW 36.18.012(10). The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of the tax, interest, penalties, and filing fee and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant, and charged by the commissioner to the employer. A copy of the warrant shall be mailed to the employer using a method by which the mailing can be tracked or the delivery can be confirmed within five days of filing with the clerk. [2019 c 13 s 25; 2017 3rd sp.s. c 5 s 63. Formerly RCW 50A.04.160.]

RCW 50A.45.050 Liens. The claim of the employment security department for any premiums, interest, or penalties not paid when due, shall be a lien prior to all other liens or claims and on a parity with prior tax liens against all property and rights to property, whether real or personal, belonging to the employer. In order to avail itself of the lien hereby created, the department shall file with any county auditor where property of the employer is located a statement and claim of lien specifying the amount of delinquent premiums, interest, and penalties claimed by the department. From the time of

filing for record, the amount required to be paid shall constitute a lien upon all property and rights to property, whether real or personal, in the county, owned by the employer or acquired by him or her. The lien shall not be valid against any purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor until notice thereof has been filed with the county auditor. This lien shall be separate and apart from, and in addition to, any other lien or claim created by, or provided for in, this title. When any such notice of lien has been so filed, the commissioner may release the same by filing a certificate of release when it shall appear that the amount of delinquent premiums, interest, and penalties have been paid, or when such assurance of payment shall be made as the commissioner may deem to be adequate. Fees for filing and releasing the lien provided herein may be charged to the employer and may be collected from the employer utilizing the remedies provided in this title for the collection of premiums. [2019 c 13 s 26; 2017 3rd sp.s. c 5 s 56. Formerly RCW 50A.04.165.]

RCW 50A.45.055 Liens—Insolvency, dissolution, or distribution of assets. In the event of any distribution of an employer's assets pursuant to an order of any court, including any receivership, probate, legal dissolution, or similar proceeding, or in case of any assignment for the benefit of creditors, composition, or similar proceeding, premiums, interest, or penalties then or thereafter due shall be a lien upon all the assets of such employer. Said lien is prior to all other liens or claims except prior tax liens, other liens provided by this title, and claims for remuneration for services of not more than two hundred fifty dollars to each claimant earned within six months of the commencement of the proceeding. The mere existence of a condition of insolvency or the institution of any judicial proceeding for legal dissolution or of any proceeding for distribution of assets shall cause such a lien to attach without action on behalf of the commissioner or the state. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended, premiums, interest, or penalties then or thereafter due shall be entitled to such priority as provided in that act, as amended. [2019 c 13 s 27; 2017 3rd sp.s. c 5 s 57. Formerly RCW 50A.04.170.]

RCW 50A.45.060 Civil actions—Service of process. (1) If after due notice, any employer defaults in any payment of premiums, interest, or penalties, the amount due may be collected by civil action in the name of the state, and the employer adjudged in default shall pay the cost of such action. Any lien created by this title may be foreclosed by decree of the court in any such action. Civil actions brought under this title to collect premiums, interest, or penalties from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this title, cases arising under the unemployment compensation laws of this state, and cases arising under the industrial insurance laws of this state.

(2) Any employer that is not a resident of this state and that exercises the privilege of having one or more individuals perform

service for it within this state, and any resident employer that exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of process in any action under this title. In instituting such an action against any such employer the commissioner shall cause such process or notice to be filed with the secretary of state and such service shall be sufficient service upon such employer, and shall be of the same force and validity as if served upon it personally within this state: PROVIDED, That the commissioner shall forthwith send notice of the service of such process or notice, together with a copy thereof, by registered mail, return receipt requested, to such employer at its last known address and such return receipt, the commissioner's affidavit of compliance with the provisions of this section, and a copy of the notice of service shall be appended to the original of the process filed in the court in which such action is pending. [2019 c 13 s 28; 2017 3rd sp.s. c 5 s 64. Formerly RCW 50A.04.175.]

RCW 50A.45.065 Injunction from continuing in business. Any employer who is delinquent in the payment of premiums, interest, or penalties may be enjoined upon the suit of the state of Washington from continuing in business in this state or employing persons herein until the delinquent premiums, interest, and penalties have been paid, or until the employer has furnished a good and sufficient bond in a sum equal to double the amount of premiums, interest, and penalties already delinquent, plus such further sum as the court deems adequate to protect the department in the collection of premiums, interest, and penalties which will become due from such employer during the next ensuing calendar year, said bond to be conditioned upon payment of all premiums, interest, and penalties due and owing within thirty days after the expiration of the next ensuing calendar year or at such earlier date as the court may fix. Action under this section may be instituted in the superior court of any county of the state wherein the employer resides, has its principal place of business, or where it has anyone performing services for it, whether or not such services constitute employment. [2017 3rd sp.s. c 5 s 65. Formerly RCW 50A.04.180.]

RCW 50A.45.070 Compromise of claims. The commissioner may compromise any claim for premiums, interest, or penalties due and owing from an employer, and any amount owed by an individual because of benefit overpayments existing or arising under this title in any case where collection of the full amount due and owing, whether reduced to judgment or otherwise, would be against equity and good conscience. Whenever a compromise is made by the commissioner in the case of a claim for premiums, interest, or penalties, whether reduced to judgment or otherwise, there shall be placed on file in the department a statement of the amount of premiums, interest, and penalties imposed by law and claimed due, attorneys' fees and costs, if any, a complete record of the compromise agreement, and the amount actually paid in accordance with the terms of the compromise agreement. Whenever a compromise is made by the commissioner in the case of a claim of a benefit overpayment, whether reduced to judgment or otherwise, there shall be placed on file in the department a statement of the amount of the benefit overpayment, attorneys' fees

and costs, if any, a complete record of the compromise agreement, and the amount actually paid in accordance with the terms of the compromise agreement. If any such compromise is accepted by the commissioner, within such time as may be stated in the compromise or agreed to, such compromise shall be final and conclusive and except upon showing of fraud or malfeasance or misrepresentation of a material fact the case shall not be reopened as to the matters agreed upon. In any suit, action, or proceeding, such agreement or any determination, collection, payment, adjustment, refund, or credit made in accordance therewith shall not be annulled, modified, set aside, or disregarded. [2019 c 13 s 29; 2017 3rd sp.s. c 5 s 54. Formerly RCW 50A.04.185.]

RCW 50A.45.075 Uncollectible accounts. The commissioner may charge off as uncollectible and no longer an asset of the family and medical leave account, any delinquent premiums, interest, penalties, credits, or benefit overpayments if the commissioner is satisfied that there are no cost-effective means of collecting the premiums, interest, penalties, credits, or benefit overpayments. [2017 3rd sp.s. c 5 s 66. Formerly RCW 50A.04.190.]