
HOUSE BILL 1116

State of Washington**65th Legislature****2017 Regular Session**

By Representatives Robinson, Doglio, Senn, Reeves, Gregerson, Frame, Lytton, Kagi, Stonier, Tarleton, Jinkins, Ortiz-Self, Ormsby, Macri, Riccelli, and Tharinger

1 AN ACT Relating to implementing family and medical leave
2 insurance; amending RCW 49.86.005, 49.86.010, 49.86.020, 49.86.030,
3 49.86.050, 49.86.060, 49.86.070, 49.86.080, 49.86.090, 49.86.110,
4 49.86.120, 49.86.130, 49.86.140, 49.86.160, 49.86.170, 49.86.180, and
5 49.86.210; reenacting and amending RCW 43.79A.040, 50.29.021, and
6 34.05.328; adding new sections to chapter 49.86 RCW; creating a new
7 section; repealing RCW 49.86.100; and prescribing penalties.

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

9 **Sec. 1.** RCW 49.86.005 and 2007 c 357 s 1 are each amended to
10 read as follows:

11 The legislature finds that, although family and medical leave
12 laws have assisted individuals to balance the demands of the
13 workplace with their family responsibilities, more needs to be done
14 to achieve the goals of parent and child bonding, family care,
15 children and family health, workforce stability, and economic
16 security. In particular, the legislature finds that many individuals
17 do not have access to family and medical leave laws, and those who do
18 may not be in a financial position to take family and medical leave
19 that is unpaid, and that employer-paid benefits meet only a
20 relatively small part of this need. The legislature declares it to be
21 in the public interest to establish a program that: (1) Allows

1 parents to bond with a newborn or newly placed child, workers to care
2 for family members with a serious health condition or to recover from
3 their own serious health condition, and workers to deal with
4 exigencies arising out of the military service of a family member;
5 (2) provides limited and additional income support for a reasonable
6 period while an individual is away from work on family and medical
7 leave; (3) reduces the impact on state income support programs by
8 increasing an individual's ability to provide caregiving services for
9 ((a—child)) family members while maintaining an employment
10 relationship; and (4) establishes a wage replacement benefit to be
11 coordinated with current existing state and federal family and
12 medical leave laws.

13 **Sec. 2.** RCW 49.86.010 and 2007 c 357 s 3 are each amended to
14 read as follows:

15 The definitions in this section apply throughout this chapter
16 unless the context clearly requires otherwise.

17 (1)(a) With respect to leave for the birth or placement of a
18 child, "application year" means the twelve-month period beginning on
19 the first day of the calendar week of the birth or placement of the
20 child.

21 (b) With respect to leave for a family member's or the
22 individual's serious health condition, or leave for military
23 exigency, "application year" means the twelve-month period beginning
24 on the first day of the calendar week in which an individual files an
25 application for family and medical leave insurance benefits ((and,
26 thereafter, the twelve-month period beginning with the first day of
27 the calendar week in which the individual next files an application
28 for family leave insurance benefits after the expiration of the
29 individual's last preceding application year)).

30 (c) An application year may not begin before the individual's
31 last preceding application year has expired.

32 (2) "Calendar quarter" means the same as in RCW 50.04.050.

33 (3) "Child" means a biological ((or an)), adopted ((child)), or
34 foster child, and a stepchild, a legal ward, or a child of a person
35 standing in loco parentis.

36 (4) "Commissioner" means the commissioner of the department.

37 (5) "Department" means the ((state agency to be directed to
38 administer the family leave insurance program.

1 ~~(5) "Director" means the director of the~~) employment security
2 department.

3 (6) "Employer" means: (a) ~~((The same as in RCW 50.04.080))~~ Any
4 individual or type of organization, including any partnership,
5 association, trust, estate, joint stock company, insurance company,
6 limited liability company, or corporation, whether domestic or
7 foreign, or the receiver, trustee in bankruptcy, trustee, or the
8 legal representative of a deceased person, having any person in
9 employment or, having become an employer, has not ceased to be an
10 employer; and (b) the state and its political subdivisions.

11 (7) "Employment" ~~((has the meaning provided in RCW 50.04.100))~~
12 means personal service, of whatever nature, unlimited by the
13 relationship of master and servant as known to the common law or any
14 other legal relationship, including service in interstate commerce,
15 performed for wages or under any contract calling for the performance
16 of personal services, written or oral, express or implied.
17 "Employment" does not include individuals working as independent
18 contractors or self-employed individuals.

19 (8) "Family and medical leave" means ~~leave((:(a) Because of the~~
20 ~~birth of a child of the employee and in order to care for the child;~~
21 ~~or (b) because of the placement of a child with the employee for~~
22 ~~adoption))~~ for a family member's serious health condition, leave for
23 the birth or placement of a child under the age of eighteen, and
24 leave for the individual's serious health condition as these types of
25 leave are defined in RCW 49.78.020 and described in RCW 49.78.220,
26 and leave taken by a family member for a military exigency.

27 (9) "Family and medical leave insurance benefits" means the
28 benefits payable under RCW 49.86.050 and 49.86.060.

29 (10) "Family member" means a child, spouse, parent, grandparent,
30 grandchild, or sibling of the individual, or any person related by
31 blood or affinity whose close association with the individual is the
32 equivalent of a family relationship.

33 (11) "Federal family and medical leave act" means the federal
34 family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3,
35 107 Stat. 6).

36 ~~((11))~~ (12) "Health care provider" means the same as in RCW
37 49.78.020 except that "director" means commissioner.

38 (13) "Independent contractor" means an individual performing
39 services where:

1 (a)(i) The individual has been and will continue to be free from
2 control or direction over the performance of such service, both under
3 his or her contract of service and in fact; and

4 (ii) The service is either outside the usual course of business
5 for which such service is performed, or that such service is
6 performed outside of all the places of business of the enterprises
7 for which such service is performed; and

8 (iii) The individual is customarily engaged in an independently
9 established trade, occupation, profession, or business, of the same
10 nature as that involved in the contract of service.

11 (b) Or as a separate alternative, it does not constitute
12 employment subject to this title if it is shown that:

13 (i) The individual has been and will continue to be free from
14 control or direction over the performance of such service, both under
15 his or her contract of service and in fact;

16 (ii) The service is either outside the usual course of business
17 for which such service is performed, or that such service is
18 performed outside of all the places of business of the enterprises
19 for which such service is performed, or the individual is
20 responsible, both under the contract and in fact, for the costs of
21 the principal place of business from which the service is performed;

22 (iii) The individual is customarily engaged in an independently
23 established trade, occupation, profession, or business, of the same
24 nature as that involved in the contract of service, or such
25 individual has a principal place of business for the work the
26 individual is conducting that is eligible for a business deduction
27 for federal income tax purposes;

28 (iv) On the effective date of the contract of service, the
29 individual is responsible for filing at the next applicable filing
30 period, both under the contract of service and in fact, a schedule of
31 expenses with the internal revenue service for the type of business
32 the individual is conducting;

33 (v) On the effective date of the contract of service, or within a
34 reasonable period after the effective date of the contract, the
35 individual has established an account with the department of revenue,
36 and other state agencies as required by the particular case, for the
37 business the individual is conducting for the payment of all state
38 taxes normally paid by employers and businesses and has registered
39 for and received a unified business identifier number from the state
40 of Washington;

1 (vi) On the effective date of the contract of service, the
2 individual is maintaining a separate set of books or records that
3 reflect all items of income and expenses of the business which the
4 individual is conducting; and

5 (vii) If the services require registration under chapter 18.27
6 RCW or licensing under chapter 19.28 RCW, the individual has a valid
7 contractor registration under chapter 18.27 RCW or electrical
8 contractor license under chapter 19.28 RCW, on the date of the
9 contract for service.

10 (14) "Individual's average weekly wage" is the quotient derived
11 by dividing the individual's total wages during the two quarters of
12 the individual's qualifying year in which total wages were highest by
13 twenty-six. If the result is not a multiple of one dollar, the
14 department must round the result to the next lower multiple of one
15 dollar.

16 (15) "Military exigency" means a purpose for which leave is
17 permitted under the federal family and medical leave act and
18 implementing rules, as they existed on the effective date of this
19 section, because of a qualifying exigency.

20 (16) "Parent" means the biological or adoptive parent of the
21 individual or the individual's spouse or an individual who stood in
22 loco parentis to the individual or the individual's spouse when the
23 individual or the individual's spouse was a child.

24 (17) "Premium" or "premiums" means payments required by this
25 chapter to be made to the department for the family and medical leave
26 insurance account under RCW 49.86.170.

27 (18) "Qualifying year" means the first four of the last five
28 completed calendar quarters or, if eligibility is not established,
29 the last four completed calendar quarters immediately preceding the
30 first day of the individual's application year.

31 ~~((12) "Regularly working" means the average number of hours per~~
32 ~~workweek that an individual worked in the two quarters of the~~
33 ~~individual's qualifying year in which total wages were highest.))~~

34 (19) "Serious health condition" means the same as in RCW
35 49.78.020.

36 (20) "Spouse" means the same as in RCW 49.78.020.

37 (21) "State average weekly wage" means the average weekly wage
38 calculated under RCW 50.04.355.

39 (22) "Wages" means the same as "wages" for the purpose of payment
40 of contributions in RCW 50.04.320(1), except that only wages paid to

1 an individual for services in the state are wages for purposes of
2 this chapter. "Wages" for purposes of elective coverage under RCW
3 49.86.110 has the meaning as defined by rule.

4 NEW SECTION. Sec. 3. A new section is added to chapter 49.86
5 RCW to read as follows:

6 The definitions of "employer" and "employment" in section 1 of
7 the railroad unemployment insurance act (45 U.S.C. Sec. 351) also
8 apply throughout this chapter unless the context clearly requires
9 otherwise.

10 **Sec. 4.** RCW 49.86.020 and 2007 c 357 s 4 are each amended to
11 read as follows:

12 (1) The department shall establish and administer a family and
13 medical leave insurance program and pay family and medical leave
14 insurance benefits as specified in this chapter.

15 (2) The department shall establish procedures and forms for
16 filing (~~(claims)~~) for benefits under this chapter. The department
17 shall notify the employer within five business days of (~~(a claim)~~) an
18 application being filed under RCW 49.86.030.

19 (3) The department may require that an individual attest that:

20 (a) There has been a birth or placement of a child under the age
21 of eighteen, or the individual or the individual's family member has
22 a serious health condition, or the individual qualifies for military
23 exigency leave; and

24 (b) The individual is not earning waiting period credits or
25 receiving benefits under chapter 7.68 RCW, Title 50 or 51 RCW, or
26 other applicable federal or state crime victims' compensation,
27 unemployment compensation, industrial insurance, or disability
28 insurance laws.

29 (4) The department may require that: (a) An application for
30 benefits under this chapter be supported by a certification issued by
31 the health care provider providing health care to the individual or
32 the individual's family member, as applicable, and (b) the individual
33 provides documentation of a military exigency.

34 (5) The department shall use information sharing and integration
35 technology to facilitate the disclosure of relevant information or
36 records by (~~(the employment security department)~~) another state
37 agency, so long as an individual consents to the disclosure as
38 required under RCW 49.86.030(~~((4))~~) (1)(d).

1 ~~((4))~~ (6) Information contained in the files and records
2 pertaining to an individual under this chapter are confidential and
3 not open to public inspection, other than to public employees in the
4 performance of their official duties. However, the individual or an
5 authorized representative of an individual may review the records or
6 receive specific information from the records on the presentation of
7 the signed authorization of the individual. An employer or the
8 employer's duly authorized representative may review the records of
9 an individual employed by the employer in connection with a pending
10 claim. At the department's discretion, other persons may review
11 records when such persons are rendering assistance to the department
12 at any stage of the proceedings on any matter pertaining to the
13 administration of this chapter.

14 ~~((5))~~ (7) The department shall develop and implement an
15 outreach program to ensure that individuals who may be eligible to
16 receive family and medical leave insurance benefits under this
17 chapter are made aware of these benefits. Outreach information shall
18 explain, in an easy to understand format, eligibility requirements,
19 the application and weekly claims ~~((process))~~ processes, weekly
20 benefit amounts, maximum benefits payable, notice and medical
21 certification requirements, reinstatement and nondiscrimination
22 rights, confidentiality, and ~~((coordination of leave))~~ the
23 relationship between employment protection, leave from employment,
24 and wage replacement benefits under this chapter and other laws,
25 collective bargaining agreements, and employer policies. Outreach
26 information shall be prepared by the department with technical
27 assistance from the department of labor and industries. Outreach
28 information shall be available in English and other primary languages
29 as defined in RCW 74.04.025.

30 **Sec. 5.** RCW 49.86.030 and 2013 2nd sp.s. c 26 s 1 are each
31 amended to read as follows:

32 ~~((When the legislature has specifically appropriated funding and
33 enacted an implementation date for benefits, then beginning on that
34 specified date,))~~ (1) Family and medical leave insurance benefits are
35 payable to an individual during a period in which the individual is
36 unable to perform his or her regular or customary work because he or
37 she is on family and medical leave if the individual:

1 ~~((1))~~ (a) Files ~~((a-claim))~~ an application for benefits ~~((in~~
2 ~~each week in which the individual is on family leave, and))~~ as
3 required by rules adopted by the ~~((director))~~ commissioner;

4 ~~((2))~~ (b) Has ~~((been employed))~~ worked for an employer for at
5 least ~~((six hundred eighty hours in employment))~~ three hundred forty
6 hours during the individual's qualifying year or has met the
7 requirements of elective coverage under RCW 49.86.110;

8 ~~((3))~~ (c) Establishes an application year. An application year
9 may not be established if the qualifying year includes hours worked
10 before establishment of a previous application year;

11 ~~((4))~~ (d) Consents to the disclosure of information or records
12 deemed private and confidential under ~~((chapter 50.13 RCW))~~ state
13 law. Initial disclosure of this information and these records by
14 ~~((the employment security department))~~ another state agency to the
15 department is solely for purposes related to the administration of
16 this chapter. Further disclosure of this information or these records
17 is subject to RCW 49.86.020~~((3))~~ (5) and section 14 of this act;

18 ~~((5))~~ (e) Discloses whether or not he or she owes child support
19 obligations as defined in RCW 50.40.050; ~~((and~~

20 ~~(6) Documents that he or she has provided))~~ (f) Provides his or
21 her social security number;

22 (g) Provides a document authorizing the family member's or
23 individual's health care provider, as applicable, to disclose the
24 family member's or individual's health care information in the form
25 of the certification of a serious health condition;

26 (h) Provides the employer from whom family and medical leave is
27 to be taken with written notice of the individual's intention to take
28 family leave in the same manner as an employee is required to provide
29 notice in RCW 49.78.250 and, in the individual's initial application
30 for benefits, attests that written notice has been provided; and

31 (i) If requested by the employer, provides documentation of a
32 military exigency.

33 (2) An individual who is not working for an employer at the time
34 of filing an application for benefits is exempt from subsection
35 (1)(h) and (i) of this section.

36 (3)(a) With respect to leave for the birth or placement of a
37 child or a family member's serious health condition or military
38 exigency leave, family and medical leave insurance benefits are
39 payable beginning October 1, 2019.

1 (b) With respect to leave for an individual's serious health
2 condition, family and medical leave insurance benefits are payable
3 beginning October 1, 2020.

4 **Sec. 6.** RCW 49.86.050 and 2007 c 357 s 7 are each amended to
5 read as follows:

6 (1) The maximum number of weeks during which family and medical
7 leave insurance benefits are payable in an application year is ~~((five~~
8 ~~weeks))~~ twenty-six total weeks for leave for a family member's
9 serious health condition, for military exigency leave, and for the
10 birth or placement of a child, plus twelve weeks for the individual's
11 serious health condition. However, benefits are not payable during a
12 waiting period consisting of the first seven calendar days of family
13 and medical leave taken in an application year for an individual's or
14 family member's serious health condition, whether the first seven
15 calendar days of family and medical leave are employer paid or
16 unpaid.

17 (2)(a) The first payment of benefits must be ~~((made))~~ sent to an
18 individual within two weeks after the first completed weekly claim is
19 ~~((filed))~~ received or the family and medical leave began, whichever
20 is later, and subsequent payments must be ~~((made-semimonthly))~~ sent
21 biweekly thereafter.

22 (b) The payment of benefits under this chapter shall not be
23 considered a binding determination of the obligations of the
24 department under this chapter. The acceptance of compensation by the
25 individual shall likewise not be considered a binding determination
26 of his or her rights under this chapter. ~~((Whenever any payment of~~
27 ~~benefits under this chapter has been made and timely appeal therefrom~~
28 ~~has been made where the final decision is that the payment was~~
29 ~~improper, the individual shall repay it and recoupment may be made~~
30 ~~from any future payment due to the individual on any claim under this~~
31 ~~chapter. The director may exercise his or her discretion to waive, in~~
32 ~~whole or in part, the amount of any such payments where the recovery~~
33 ~~would be against equity and good conscience.~~

34 ~~(e))~~ If an individual dies before he or she receives a payment
35 of benefits, the payment shall be ~~((made))~~ sent by the department and
36 distributed consistent with the terms of the decedent's will or, if
37 the decedent dies intestate, consistent with the terms of RCW
38 11.04.015.

1 **Sec. 7.** RCW 49.86.060 and 2007 c 357 s 8 are each amended to
2 read as follows:

3 The amount of family and medical leave insurance benefits shall
4 be determined as follows:

5 (1) ~~((The weekly benefit shall be two hundred fifty dollars per
6 week for an individual who at the time of beginning family leave was
7 regularly working thirty five hours or more per week.))~~ If the
8 individual's average weekly wage is: (a) Fifty percent or less of the
9 state average weekly wage, the individual's weekly benefit is ninety
10 percent of the individual's average weekly wage; or (b) more than
11 fifty percent of the state average weekly wage, the individual's
12 weekly benefit is the sum of: (i) Ninety percent of the individual's
13 average weekly wage up to fifty percent of the state average weekly
14 wage; and (ii) fifty percent of the individual's average weekly wage
15 that is greater than fifty percent of the state average weekly wage.

16 (2) ~~((If an individual who at the time of beginning family leave
17 was regularly working thirty five hours or more per week is on family
18 leave for less than thirty five hours but at least eight hours in a
19 week, the individual's weekly benefit shall be .025 times the maximum
20 weekly benefit times the number of hours of family leave taken in the
21 week.))~~ Beginning October 1, 2019, the maximum weekly benefit amount
22 shall be one thousand dollars. By September 30, 2020, and by each
23 subsequent September 30th, the department shall adjust the maximum
24 weekly benefit amount to ninety percent of the state average weekly
25 wage. The adjusted maximum weekly benefit amount takes effect on the
26 following January 1st.

27 (3) An individual may submit weekly claims on an intermittent
28 basis; however, benefits are not payable for less than eight hours of
29 family and medical leave taken in a week.

30 ~~((3) For an individual who at the time of beginning family leave
31 was regularly working less than thirty five hours per week, the
32 department shall calculate a prorated schedule for a weekly benefit
33 amount and a minimum number of hours of family leave that must be
34 taken in a week for benefits to be payable, with the prorated
35 schedule based on the amounts and the calculations specified under
36 subsections (1) and (2) of this section.))~~

37 (4) If an individual discloses that he or she owes child support
38 obligations under RCW 49.86.030 and the department determines that
39 the individual is eligible for benefits, the department shall notify
40 the applicable state or local child support enforcement agency and

1 deduct and withhold an amount from benefits in a manner consistent
2 with RCW 50.40.050.

3 (5) If (~~the internal revenue service determines that family~~
4 ~~leave insurance benefits under this chapter are subject to federal~~
5 ~~income tax and~~) an individual elects to have federal income tax
6 deducted and withheld from benefits under RCW 49.86.070, the
7 department shall deduct and withhold the amount specified in the
8 federal internal revenue code in a manner consistent with RCW
9 49.86.070.

10 **Sec. 8.** RCW 49.86.070 and 2007 c 357 s 9 are each amended to
11 read as follows:

12 (1) If the internal revenue service determines that family and
13 medical leave insurance benefits under this chapter are subject to
14 federal income tax, the department must advise an individual filing a
15 new (~~claim~~) application for family and medical leave insurance
16 benefits, at the time of filing such (~~claim~~) application, that:

17 (a) The internal revenue service has determined that benefits are
18 subject to federal income tax;

19 (b) Requirements exist pertaining to estimated tax payments;

20 (c) The individual may elect to have federal income tax deducted
21 and withheld from the individual's payment of benefits at the amount
22 specified in the federal internal revenue code; and

23 (d) The individual is permitted to change a previously elected
24 withholding status.

25 (2) Amounts deducted and withheld from benefits must remain in
26 the family and medical leave insurance account until transferred to
27 the federal taxing authority as a payment of income tax.

28 (3) The (~~director~~) commissioner shall follow all procedures
29 specified by the federal internal revenue service pertaining to the
30 deducting and withholding of income tax.

31 **Sec. 9.** RCW 49.86.080 and 2007 c 357 s 10 are each amended to
32 read as follows:

33 (1) If family and medical leave insurance benefits are paid
34 erroneously or as a result of willful misrepresentation, or if a
35 claim for family and medical leave benefits is rejected after
36 benefits are paid, (~~RCW 51.32.240 shall apply, except that appeals~~
37 ~~are governed by RCW 49.86.120, penalties are paid into the family~~
38 ~~leave insurance account, and the department shall seek repayment of~~

1 ~~benefits from the recipient))~~ the department shall issue an
2 overpayment assessment setting forth the reasons for, and the amount
3 of, the overpayment. The recipient must repay the amount assessed and
4 recoupment may be made from any future payments due the recipient
5 under this chapter.

6 (2) The commissioner may waive an overpayment if the commissioner
7 finds that the overpayment was not the result of fraud,
8 misrepresentation, willful nondisclosure, or fault attributable to
9 the individual and that the recovery thereof would be against equity
10 and good conscience.

11 (3) If any overpayment was induced by willful misrepresentation,
12 the recipient shall pay, in addition to the amount assessed, a
13 penalty of fifty percent of the total of any such payments. The
14 amount of the total sum may be recouped from any future payments due
15 the recipient under this chapter, and the amount of such penalty
16 shall be placed in the family and medical leave account. The
17 repayment or recoupment must be demanded or ordered within three
18 years of the discovery of the willful misrepresentation.

19 (4) Appeals of overpayment assessments and penalties shall be
20 governed by RCW 49.86.120.

21 (5) Whenever such an overpayment assessment becomes conclusive
22 and final, the department may file with the superior court clerk of
23 any county within the state a warrant in the amount of the
24 overpayment assessment plus a filing fee under RCW 36.18.012(10).
25 However, the department must first give at least twenty days' notice
26 by certified mail return receipt requested, to the individual's last
27 known address of the intended action.

28 (a) The clerk of the county where the warrant is filed shall
29 immediately designate a superior court cause number for the warrant.
30 The clerk shall cause to be entered in the judgment docket under the
31 superior court cause number assigned to the warrant the name of the
32 person or persons mentioned in the warrant, the amount of the
33 overpayment assessment, and the date when the warrant was filed.

34 (b) The amount of the warrant as docketed shall become a lien
35 upon the title to, and any interest in, all real and personal
36 property of the person or persons against whom the warrant is issued,
37 the same as a judgment in a civil case duly docketed in the office of
38 the clerk. A warrant so docketed shall be sufficient to support the
39 issuance of writs of execution and writs of garnishment in favor of
40 the state in the manner provided by law for a civil judgment.

1 (c) A copy of the warrant shall be mailed to the person or
2 persons mentioned in the warrant by certified mail to the person's
3 last known address within ten days of its filing with the clerk.

4 **Sec. 10.** RCW 49.86.090 and 2007 c 357 s 11 are each amended to
5 read as follows:

6 (1) During a period in which an individual receives family and
7 medical leave insurance benefits or earns waiting period credits
8 under this chapter, the individual is entitled to family and medical
9 leave and, at the established ending date of leave, to be restored to
10 a position of employment with the employer from whom leave was taken.

11 (2) The individual entitled to leave under this section shall be
12 restored to a position of employment in the same manner and under the
13 same conditions as an employee entitled to leave under chapter 49.78
14 RCW is restored to a position of employment, as specified in RCW
15 49.78.280.

16 (3) This section applies only to an individual if:

17 (a) The employer from whom the individual takes family and
18 medical leave (~~((employs more than twenty five employees))~~) has eight
19 or more employees in employment when the individual applies. The
20 department shall interpret this subsection (3)(a) consistent with
21 rules of the Washington state human rights commission; and

22 (b) The individual has been (~~(employed)~~) in employment for at
23 least (~~((twelve))~~) six months by that employer(~~(, and for at least one~~
24 ~~thousand two hundred fifty hours of service with that employer during~~
25 ~~the previous twelve month period))~~).

26 (4) This section applies only to an individual who was in
27 employment at the time of filing an application for benefits.

28 (5) This section shall be enforced by the department of labor and
29 industries as provided in chapter 49.78 RCW.

30 NEW SECTION. **Sec. 11.** A new section is added to chapter 49.86
31 RCW to read as follows:

32 Except for any individual who is not employed at the time of
33 application for benefits, during any period an individual receives
34 family and medical leave insurance benefits, the employer must
35 maintain any health plan coverage for the duration of the leave at
36 the level and under the conditions coverage would have been provided
37 if the individual had continued in employment continuously for the
38 duration of the leave.

1 **Sec. 12.** RCW 49.86.110 and 2007 c 357 s 13 are each amended to
2 read as follows:

3 (1) ~~((An employer of individuals not covered by this chapter))~~
4 Beginning January 1, 2019, an independent contractor, or a self-
5 employed person, including a sole proprietor, partner, or joint
6 venturer, may elect coverage under this chapter ~~((for all individuals~~
7 ~~in its employ))~~ for the independent contractor or self-employed
8 person for an initial period of not less than three years or a
9 subsequent period of not less than one year immediately following
10 another period of coverage. The ~~((employer))~~ independent contractor
11 or self-employed person must file a notice of election in writing
12 with the ~~((director))~~ commissioner, as required by the department.
13 The election becomes effective on the date when the independent
14 contractor or self-employed person establishes three hundred forty
15 hours following the date of filing the notice.

16 (2) An ~~((employer))~~ independent contractor or self-employed
17 person who has elected coverage may withdraw from coverage within
18 thirty days after the end of the three-year period of coverage, or at
19 such other times as the ~~((director))~~ commissioner may ~~((prescribe))~~
20 adopt by rule, by filing ~~((written))~~ a notice of withdrawal in
21 writing with the ~~((director))~~ commissioner, such withdrawal to take
22 effect not sooner than thirty days after filing the notice~~((—Within~~
23 ~~five days of filing written notice of the withdrawal with the~~
24 ~~director, an employer must provide written notice of the withdrawal~~
25 ~~to all individuals in the employer's employ))~~ with the commissioner.

26 (3) The department may cancel elective coverage if the
27 independent contractor or self-employed person fails to make required
28 payments or reports. The department may collect due and unpaid
29 premiums and may levy an additional premium for the remainder of the
30 period of coverage. The cancellation must be effective no later than
31 thirty days from the date of the notice in writing advising the
32 independent contractor or self-employed person of the cancellation.

33 (4) In developing and implementing the requirements of this
34 section, the department shall adopt government efficiencies to
35 improve administration and reduce costs. These efficiencies may
36 include, but are not limited to, requiring that payments be made in a
37 manner and at intervals unique to the elective coverage program.

38 (5) The department shall adopt rules for determining the wages of
39 an independent contractor or self-employed individual.

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 49.86
2 RCW to read as follows:

3 (1) Beginning July 1, 2018, the department shall assess for each
4 individual employed by an employer and for each individual electing
5 coverage pursuant to RCW 49.86.110 a premium based on the amount of
6 the individual's wages. Each employer may deduct from the wages of
7 each individual up to one-half of the full amount that the employer
8 is required to pay for the individual.

9 (2)(a) Beginning July 1, 2018, and ending December 31, 2019, each
10 employer and those electing coverage pursuant to RCW 49.86.110 shall
11 pay a premium to the department of two hundred fifty-five thousandths
12 of one percent of the individual's wages.

13 (b) Beginning January 1, 2020, and ending December 31, 2020, each
14 employer and those electing coverage pursuant to RCW 49.86.110 shall
15 pay a premium to the department of fifty-one hundredths of one
16 percent of the individual's wages.

17 (c) For calendar year 2021 and thereafter, each employer and
18 those electing coverage pursuant to RCW 49.86.110 shall pay a premium
19 to the department based on the family and medical leave insurance
20 account balance ratio as of September 30th of the previous year. The
21 commissioner shall calculate the account balance ratio by dividing
22 the balance of the family and medical leave insurance account by
23 total wages paid by employers and those electing coverage pursuant to
24 RCW 49.86.110. The division shall be carried to the fourth decimal
25 place with the remaining fraction disregarded unless it amounts to
26 five thousandths or more, in which case the fourth decimal place
27 shall be rounded to the next higher digit. If the account balance
28 ratio is:

29 (i) Zero to nine hundredths of one percent, the premium is six
30 tenths of one percent of the individual's wages;

31 (ii) One tenth of one percent to nineteen hundredths of one
32 percent, the premium is five tenths of one percent of the
33 individual's wages;

34 (iii) Two tenths of one percent to twenty-nine hundredths of one
35 percent, the premium is four tenths of one percent of the
36 individual's wages;

37 (iv) Three tenths of one percent to thirty-nine hundredths of one
38 percent, the premium is three tenths of one percent of the
39 individual's wages;

1 (v) Four tenths of one percent to forty-nine hundredths of one
2 percent, the premium is two tenths of one percent of the individual's
3 wages; or

4 (vi) Five tenths of one percent or greater, the premium is one
5 tenth of one percent of the individual's wages.

6 (3) Beginning January 1, 2022, if the fund balance ratio
7 calculated in subsection (2) of this section is below 0.05 percent,
8 each employer and those electing coverage pursuant to RCW 49.86.110
9 shall also be charged a solvency surcharge at the lowest rate
10 necessary to provide revenue to fund administrative and benefit costs
11 for the calendar year, as determined by the commissioner. The
12 surcharge shall be at least 0.10 percent and no more than 0.6
13 percent.

14 (4) Payments shall be made in the manner and at such intervals as
15 provided in this chapter and directed by the department, and shall be
16 deposited in the family and medical leave insurance account. In the
17 payment of premiums, a fractional part of a cent shall be disregarded
18 unless it amounts to one-half cent or more, in which case it shall be
19 increased to one cent.

20 NEW SECTION. **Sec. 14.** A new section is added to chapter 49.86
21 RCW to read as follows:

22 (1) In the form and at the times specified in this chapter and by
23 the commissioner, an employer and those electing coverage under RCW
24 49.86.110 shall make reports, furnish information, and make payments
25 of premiums as required by section 13 of this act to the department.
26 In developing and implementing the requirements of this section and
27 section 13 of this act, the department shall adopt government
28 efficiencies to improve administration and reduce costs. These
29 efficiencies shall include, to the extent feasible, combined
30 reporting and payment, with a single return, of premiums under this
31 section and contributions under chapter 50.24 RCW. If the employer is
32 a temporary help company that provides employees on a temporary basis
33 to its customers, the temporary help company is considered the
34 employer for purposes of this section. However, if the temporary help
35 company fails to remit the required premiums, the customer to whom
36 the employees were provided is liable for paying the premiums.

37 (2)(a) An employer and those electing coverage under RCW
38 49.86.110 must keep at his or her place of business a record of
39 employment from which the information needed by the department for

1 purposes of this chapter may be obtained. This record must at all
2 times be open to the inspection of the commissioner or department
3 employees designated by the commissioner.

4 (b) Information obtained under this chapter from employer records
5 and records of those electing coverage is confidential and not open
6 to public inspection, other than to public employees in the
7 performance of their official duties. However, an interested party
8 shall be supplied with information from employer records to the
9 extent necessary for the proper presentation of the case in question.
10 An employer or those electing coverage may authorize inspection of
11 its records by written consent.

12 (3) The requirements relating to the assessment and collection of
13 family and medical leave insurance premiums are the same as the
14 requirements relating to the assessment and collection of
15 contributions under Title 50 RCW, including but not limited to
16 penalties, interest, and department lien rights and collection
17 remedies. These requirements apply to:

18 (a) An employer or those electing coverage under RCW 49.86.110
19 that fails under this chapter to make the required reports, or fails
20 to remit the full amount of the premiums when due;

21 (b) An employer or those electing coverage under RCW 49.86.110
22 that willfully makes a false statement or misrepresentation regarding
23 a material fact, or willfully fails to report a material fact, to
24 avoid making the required reports or remitting the full amount of the
25 premiums when due under this chapter;

26 (c) A successor in the manner specified in RCW 50.24.210; and

27 (d) An officer, member, or owner having control or supervision of
28 payment and/or reporting of family and medical leave insurance, or
29 who is charged with the responsibility for the filing of returns, in
30 the manner specified in RCW 50.24.230.

31 (4) Notwithstanding subsection (3) of this section, appeals are
32 governed by RCW 49.86.120.

33 **Sec. 15.** RCW 49.86.120 and 2007 c 357 s 14 are each amended to
34 read as follows:

35 (1) Except as provided in section 16(1) of this act, a person
36 ((aggrieved by a decision of the department under this chapter must))
37 may file a notice of appeal ((with the director)) from any
38 determination or redetermination made by the department with the
39 commissioner, by mail or personally, within thirty days after the

1 date on which a copy of the department's decision was (~~communicated~~
2 ~~to~~) served on the person. Upon receipt of the notice of appeal, the
3 (~~director~~) commissioner shall request the assignment of an
4 administrative law judge in accordance with chapter 34.05 RCW to
5 conduct a hearing and issue a proposed decision and order. The
6 hearing shall be conducted in accordance with chapter 34.05 RCW.

7 (2) The administrative law judge's proposed decision and order
8 shall be final and not subject to further appeal unless, within
9 thirty days after the decision is (~~communicated to~~) served on the
10 interested parties, (~~a party petitions for review by the director.~~
11 ~~If the director's review is timely requested, the director may order~~
12 ~~additional evidence by the administrative law judge. On the basis of~~
13 ~~the evidence before the administrative law judge and such additional~~
14 ~~evidence as the director may order to be taken, the director shall~~
15 ~~render a decision affirming, modifying, or setting aside the~~
16 ~~administrative law judge's decision. The director's decision becomes~~
17 ~~final and not subject to further appeal unless, within thirty days~~
18 ~~after the decision is communicated to the interested parties,)~~) a
19 party files a petition for judicial review as provided in chapter
20 34.05 RCW. (~~The director is a party to any judicial action involving~~
21 ~~the director's decision and shall be represented in the action by the~~
22 ~~attorney general.~~)

23 (3) If, upon (~~administrative or~~) judicial review, the final
24 decision of the department is reversed or modified, (~~the~~
25 ~~administrative law judge or~~) the court in its discretion may award
26 the prevailing party, other than the department, reasonable
27 attorneys' fees and costs to the prevailing party. Attorneys' fees
28 and costs owed by the department, if any, are payable from the family
29 and medical leave insurance account.

30 NEW SECTION. Sec. 16. A new section is added to chapter 49.86
31 RCW to read as follows:

32 (1) A determination of the amount of benefits potentially payable
33 issued under this chapter shall not serve as a basis for appeal under
34 RCW 49.86.120. However, the determination shall be subject to request
35 by the individual receiving family and medical leave insurance
36 benefits for redetermination by the commissioner at any time within
37 one year from the date of delivery or mailing of such determination,
38 or any redetermination thereof. A redetermination shall be furnished

1 to the individual in writing and provide the basis for appeal under
2 RCW 49.86.120.

3 (2) A determination of denial of benefits shall become final, in
4 the absence of timely appeal therefrom. The commissioner may
5 redetermine such determinations at any time within one year from
6 mailing to correct an error in identity, omission of fact, or
7 misapplication of law with respect to the facts.

8 (3) A determination of allowance of benefits shall become final,
9 in the absence of a timely appeal therefrom. The commissioner may
10 redetermine such allowance at any time within two years following the
11 application year in which such allowance was made in order to recover
12 any benefits for which recovery is provided under RCW 49.86.080.

13 (4) A redetermination may be made at any time: (a) To conform to
14 a final court decision applicable to either an initial determination
15 or a determination of denial or allowance of benefits; (b) in the
16 event of a back pay award or settlement affecting the allowance of
17 benefits; or (c) in the case of misrepresentation or willful failure
18 to report a material fact. Written notice of any such redetermination
19 shall be promptly given by mail or delivered to such interested
20 parties as were notified of the initial determination or
21 determination of denial or allowance of benefits and any new
22 interested party or parties who, pursuant to such rule as the
23 commissioner may adopt, would be an interested party.

24 **Sec. 17.** RCW 49.86.130 and 2007 c 357 s 15 are each amended to
25 read as follows:

26 (1) An employer, temporary help company, employment agency,
27 employee organization, or other person may not discharge, expel, or
28 otherwise discriminate against ~~((a person))~~ an individual because he
29 or she has filed or communicated to the employer an intent to file
30 ~~((a))~~ application, a weekly claim, a complaint, or an appeal, or has
31 testified or is about to testify or has assisted in any proceeding,
32 under this chapter, at any time, including during the waiting period
33 described in RCW 49.86.050 and the period in which the ~~((person))~~
34 individual receives family and medical leave insurance benefits under
35 this chapter. ~~((This section shall be enforced as provided in RCW
36 51.48.025.))~~

37 (2) Any individual who believes that he or she has been
38 discharged or otherwise discriminated against by an employer in
39 violation of this section may file a complaint with the commissioner

1 alleging discrimination within ninety days of the date of the alleged
2 violation. Upon receipt of such complaint, the commissioner shall
3 cause an investigation to be made as the commissioner deems
4 appropriate. Within ninety days of the receipt of a complaint filed
5 under this section, the commissioner shall notify the complainant of
6 his or her determination. If, upon such investigation, it is
7 determined that this section has been violated, the commissioner
8 shall bring an action in the superior court of the county in which
9 the violation is alleged to have occurred.

10 (3) If the commissioner determines that this section has not been
11 violated, the individual may institute the action on his or her own
12 behalf.

13 (4) In any action brought under this section, the superior court
14 shall have jurisdiction, for cause shown, to restrain violations of
15 subsection (1) of this section and to order all appropriate relief
16 including rehiring or reinstatement of the individual with back pay.

17 **Sec. 18.** RCW 49.86.140 and 2007 c 357 s 16 are each amended to
18 read as follows:

19 ~~(1)((a) Leave taken under this chapter must be taken~~
20 ~~concurrently with any leave taken))~~ If an individual is entitled to
21 employment protection under this chapter and under the federal family
22 and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107
23 Stat. 6) (~~or under~~), chapter 49.78 RCW, or other applicable
24 federal, state, or local law, the individual is entitled to
25 employment protection under the other applicable law most favorable
26 to the individual.

27 ~~((b) An))~~ (2) Except as provided in this subsection, if an
28 individual is entitled to family and medical leave under this chapter
29 and under the federal family and medical leave act, chapter 49.78
30 RCW, or other applicable federal, state, or local law, the employer
31 may require that leave (~~taken~~) under this chapter be taken
32 concurrently (~~or otherwise coordinated~~) with leave (~~allowed~~)
33 under (~~the terms of a collective bargaining agreement or employer~~
34 policy, as applicable, for the birth or placement of a child)) other
35 applicable laws. The employer must give individuals in its employ
36 written notice of this requirement. Leave from employment under this
37 chapter is in addition to leave from employment during which benefits
38 are paid or are payable under Title 51 RCW or other applicable
39 federal or state industrial insurance laws.

1 (3) In any week in which an individual is earning any required
2 waiting period credits or receiving benefits under chapter 7.68 RCW,
3 Title 50 or 51 RCW, or other applicable federal or state crime
4 victims' compensation, unemployment compensation, industrial
5 insurance, or disability insurance laws, the individual is
6 disqualified from receiving family and medical leave insurance
7 benefits under this chapter.

8 (4)(a) Except as provided in this section, this chapter does not
9 prohibit an employer from negotiating a collective bargaining
10 agreement or adopting employer policies, as applicable, to coordinate
11 existing benefits with leave from employment and wage replacement
12 benefits required under this chapter.

13 ((2)(a)) (b) This chapter does not diminish an employer's
14 obligation to comply with a collective bargaining agreement or
15 employer policy, as applicable, that provides greater ((leave for the
16 birth or placement of a child)) employment protection, leave from
17 employment, health plan benefits, or wage replacement benefits than
18 under this chapter.

19 ((b)) (c) An individual's ((right to leave)) rights to
20 employment protection, leave from employment, health plan benefits,
21 and wage replacement benefits under this chapter may not be
22 diminished by a collective bargaining agreement entered into or
23 renewed or an employer policy adopted or retained after ((July 1,
24 2008)) the effective date of this section. Any agreement by an
25 individual to waive his or her rights under this chapter is void as
26 against public policy.

27 (d) If an employer provides wage replacement benefits to an
28 individual while on family and medical leave through disability
29 insurance or any other means, the individual may elect whether first
30 to receive such benefits or receive family and medical leave
31 insurance benefits under this chapter. An individual may not be
32 required to receive the individual's wage replacement benefits, if
33 any, before receiving family and medical leave insurance benefits
34 under this chapter.

35 **Sec. 19.** RCW 49.86.160 and 2007 c 357 s 18 are each amended to
36 read as follows:

37 The ((director)) commissioner may adopt rules as necessary to
38 implement this chapter. In adopting rules, the ((director))
39 commissioner shall maintain consistency with the rules adopted to

1 implement the federal family and medical leave act, and chapter 49.78
2 RCW, to the extent such rules are not in conflict with this chapter.
3 RCW 34.05.328 does not apply to rules adopted by the commissioner to
4 implement RCW 49.86.060(1) or section 13(3) of this act.

5 **Sec. 20.** RCW 49.86.170 and 2009 c 4 s 905 are each amended to
6 read as follows:

7 The family and medical leave insurance account is created in the
8 custody of the state treasurer. All receipts from the premiums
9 imposed under this chapter must be deposited in the account.
10 Expenditures from the account may be used only for the purposes of
11 the family and medical leave insurance program. Only the ((~~director~~
12 ~~of the department of labor and industries~~)) commissioner or the
13 ((~~director's~~)) commissioner's designee may authorize expenditures
14 from the account. The account is subject to the allotment procedures
15 under chapter 43.88 RCW. An appropriation is required for
16 administrative expenses, but not for benefit payments. ((~~During the~~
17 ~~2007-2009 fiscal biennium, the legislature may transfer from the~~
18 ~~family leave insurance account to the state general fund such amounts~~
19 ~~as reflect the excess fund balance of the account.~~))

20 **Sec. 21.** RCW 49.86.180 and 2007 c 357 s 20 are each amended to
21 read as follows:

22 Whenever, in the judgment of the state investment board, there
23 shall be in the family and medical leave insurance account funds in
24 excess of that amount deemed by the state investment board to be
25 sufficient to meet the current expenditures properly payable
26 therefrom, the state investment board shall have full power to
27 invest, reinvest, manage, contract, or sell or exchange investments
28 acquired with such excess funds in the manner prescribed by RCW
29 43.84.150, and not otherwise.

30 **Sec. 22.** RCW 43.79A.040 and 2016 c 203 s 2, 2016 c 173 s 10,
31 2016 c 69 s 21, and 2016 c 39 s 7 are each reenacted and amended to
32 read as follows:

33 (1) Money in the treasurer's trust fund may be deposited,
34 invested, and reinvested by the state treasurer in accordance with
35 RCW 43.84.080 in the same manner and to the same extent as if the
36 money were in the state treasury, and may be commingled with moneys
37 in the state treasury for cash management and cash balance purposes.

1 (2) All income received from investment of the treasurer's trust
2 fund must be set aside in an account in the treasury trust fund to be
3 known as the investment income account.

4 (3) The investment income account may be utilized for the payment
5 of purchased banking services on behalf of treasurer's trust funds
6 including, but not limited to, depository, safekeeping, and
7 disbursement functions for the state treasurer or affected state
8 agencies. The investment income account is subject in all respects to
9 chapter 43.88 RCW, but no appropriation is required for payments to
10 financial institutions. Payments must occur prior to distribution of
11 earnings set forth in subsection (4) of this section.

12 (4)(a) Monthly, the state treasurer must distribute the earnings
13 credited to the investment income account to the state general fund
14 except under (b), (c), and (d) of this subsection.

15 (b) The following accounts and funds must receive their
16 proportionate share of earnings based upon each account's or fund's
17 average daily balance for the period: The 24/7 sobriety account, the
18 Washington promise scholarship account, the Washington advanced
19 college tuition payment program account, the Washington college
20 savings program account, the accessible communities account, the
21 Washington achieving a better life experience program account, the
22 community and technical college innovation account, the agricultural
23 local fund, the American Indian scholarship endowment fund, the
24 foster care scholarship endowment fund, the foster care endowed
25 scholarship trust fund, the contract harvesting revolving account,
26 the Washington state combined fund drive account, the commemorative
27 works account, the county enhanced 911 excise tax account, the toll
28 collection account, the developmental disabilities endowment trust
29 fund, the energy account, the fair fund, the family and medical leave
30 insurance account, the food animal veterinarian conditional
31 scholarship account, the fruit and vegetable inspection account, the
32 future teachers conditional scholarship account, the game farm
33 alternative account, the GET ready for math and science scholarship
34 account, the Washington global health technologies and product
35 development account, the grain inspection revolving fund, the
36 industrial insurance rainy day fund, the juvenile accountability
37 incentive account, the law enforcement officers' and firefighters'
38 plan 2 expense fund, the local tourism promotion account, the
39 multiagency permitting team account, the pilotage account, the
40 produce railcar pool account, the regional transportation investment

1 district account, the rural rehabilitation account, the Washington
2 sexual assault kit account, the stadium and exhibition center
3 account, the youth athletic facility account, the self-insurance
4 revolving fund, the children's trust fund, the Washington horse
5 racing commission Washington bred owners' bonus fund and breeder
6 awards account, the Washington horse racing commission class C purse
7 fund account, the individual development account program account, the
8 Washington horse racing commission operating account, the life
9 sciences discovery fund, the Washington state heritage center
10 account, the reduced cigarette ignition propensity account, the
11 center for childhood deafness and hearing loss account, the school
12 for the blind account, the Millersylvania park trust fund, the public
13 employees' and retirees' insurance reserve fund, and the radiation
14 perpetual maintenance fund.

15 (c) The following accounts and funds must receive eighty percent
16 of their proportionate share of earnings based upon each account's or
17 fund's average daily balance for the period: The advanced right-of-
18 way revolving fund, the advanced environmental mitigation revolving
19 account, the federal narcotics asset forfeitures account, the high
20 occupancy vehicle account, the local rail service assistance account,
21 and the miscellaneous transportation programs account.

22 (d) Any state agency that has independent authority over accounts
23 or funds not statutorily required to be held in the custody of the
24 state treasurer that deposits funds into a fund or account in the
25 custody of the state treasurer pursuant to an agreement with the
26 office of the state treasurer shall receive its proportionate share
27 of earnings based upon each account's or fund's average daily balance
28 for the period.

29 (5) In conformance with Article II, section 37 of the state
30 Constitution, no trust accounts or funds shall be allocated earnings
31 without the specific affirmative directive of this section.

32 **Sec. 23.** RCW 49.86.210 and 2013 2nd sp.s. c 26 s 2 are each
33 amended to read as follows:

34 Beginning (~~one year after the implementation date specified by~~
35 ~~the legislature pursuant to RCW 49.86.030~~) December 1, 2020, and
36 annually thereafter, the department shall report to the legislature
37 on:

- 38 (1) Projected and actual program participation((τ));
39 (2) Premium rates((τ));

1 (3) Fund balances((τ));

2 (4) Benefits paid;

3 (5) Demographic information on program participants, including
4 income, gender, race, ethnicity, geographic distribution by county
5 and legislative district, and employment sector;

6 (6) Costs of providing benefits; and

7 (7) Outreach efforts.

8 **Sec. 24.** RCW 50.29.021 and 2013 c 244 s 1 and 2013 c 189 s 3 are
9 each reenacted and amended to read as follows:

10 (1) This section applies to benefits charged to the experience
11 rating accounts of employers for claims that have an effective date
12 on or after January 4, 2004.

13 (2)(a) An experience rating account shall be established and
14 maintained for each employer, except employers as described in RCW
15 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
16 payments in lieu of contributions, taxable local government employers
17 as described in RCW 50.44.035, and those employers who are required
18 to make payments in lieu of contributions, based on existing records
19 of the employment security department.

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

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

31 (i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and
32 became unemployed after having worked and earned wages in the bona
33 fide work; or

34 (ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through
35 (x).

36 (3) The legislature finds that certain benefit payments, in whole
37 or in part, should not be charged to the experience rating accounts
38 of employers except those employers described in RCW 50.44.010,
39 50.44.030, and 50.50.030 who have properly elected to make payments

1 in lieu of contributions, taxable local government employers
2 described in RCW 50.44.035, and those employers who are required to
3 make payments in lieu of contributions, as follows:

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

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

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

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

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

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

24 (e) Benefits paid to an individual who qualifies for benefits
25 under RCW 50.20.050 (1)(b) (iv) or (xi) or (2)(b) (iv) or (xi), as
26 applicable, shall not be charged to the experience rating account of
27 any contribution paying employer.

28 (f) With respect to claims with an effective date on or after the
29 first Sunday following April 22, 2005, benefits paid that exceed the
30 benefits that would have been paid if the weekly benefit amount for
31 the claim had been determined as one percent of the total wages paid
32 in the individual's base year shall not be charged to the experience
33 rating account of any contribution paying employer. This subsection
34 (3)(f) does not apply to the calculation of contribution rates under
35 RCW 50.29.025 for rate year 2010 and thereafter.

36 (g) The forty-five dollar increase paid as part of an
37 individual's weekly benefit amount as provided in RCW 50.20.1201 and
38 the twenty-five dollar increase paid as part of an individual's
39 weekly benefit amount as provided in RCW 50.20.1202 shall not be

1 charged to the experience rating account of any contribution paying
2 employer.

3 (h) With respect to claims where the minimum amount payable
4 weekly is increased to one hundred fifty-five dollars pursuant to RCW
5 50.20.1201(3), benefits paid that exceed the benefits that would have
6 been paid if the minimum amount payable weekly had been calculated
7 pursuant to RCW 50.20.120 shall not be charged to the experience
8 rating account of any contribution paying employer.

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

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

17 (4)(a) A contribution paying base year employer, except employers
18 as provided in subsection (6) of this section, not otherwise eligible
19 for relief of charges for benefits under this section, may receive
20 such relief if the benefit charges result from payment to an
21 individual who:

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

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

27 (iii) Is unemployed as a result of closure or severe curtailment
28 of operation at the employer's plant, building, worksite, or other
29 facility. This closure must be for reasons directly attributable to a
30 catastrophic occurrence such as fire, flood, or other natural
31 disaster;

32 (iv) Continues to be employed on a regularly scheduled permanent
33 part-time basis by a base year employer and who at some time during
34 the base year was concurrently employed and subsequently separated
35 from at least one other base year employer. Benefit charge relief
36 ceases when the employment relationship between the employer
37 requesting relief and the claimant is terminated. This subsection
38 does not apply to shared work employers under chapter 50.60 RCW;

39 (v) Continues to be employed on a regularly scheduled permanent
40 part-time basis by a base year employer and who qualified for two

1 consecutive unemployment claims where wages were attributable to at
2 least one employer who employed the individual in both base years.
3 Benefit charge relief ceases when the employment relationship between
4 the employer requesting relief and the claimant is terminated. This
5 subsection does not apply to shared work employers under chapter
6 50.60 RCW; ((~~or~~))

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

13 (vii) Worked for an employer for forty weeks or less, and was
14 laid off at the end of temporary employment when that individual
15 temporarily replaced a permanent employee receiving family and
16 medical leave insurance benefits under chapter 49.86 RCW, and the
17 layoff is due to the return of that permanent employee. This
18 subsection applies to claims with an effective date on or after July
19 7, 2019.

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

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

38 (6) An employer's experience rating account may not be relieved
39 of charges for a benefit payment and an employer who reimburses the
40 trust fund for benefit payments may not be credited for a benefit

1 payment if a benefit payment was made because the employer or
2 employer's agent failed to respond timely or adequately to a written
3 request of the department for information relating to the claim or
4 claims without establishing good cause for the failure and the
5 employer or employer's agent has a pattern of such failures. The
6 commissioner has the authority to determine whether the employer has
7 good cause under this subsection.

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

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

- 18 (A) At least three times in the previous two years; or
- 19 (B) Twenty percent of the total current claims against the
20 employer.

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

24 **Sec. 25.** RCW 34.05.328 and 2011 c 298 s 21 and 2011 c 149 s 1
25 are each reenacted and amended to read as follows:

26 (1) Before adopting a rule described in subsection (5) of this
27 section, an agency must:

28 (a) Clearly state in detail the general goals and specific
29 objectives of the statute that the rule implements;

30 (b) Determine that the rule is needed to achieve the general
31 goals and specific objectives stated under (a) of this subsection,
32 and analyze alternatives to rule making and the consequences of not
33 adopting the rule;

34 (c) Provide notification in the notice of proposed rule making
35 under RCW 34.05.320 that a preliminary cost-benefit analysis is
36 available. The preliminary cost-benefit analysis must fulfill the
37 requirements of the cost-benefit analysis under (d) of this
38 subsection. If the agency files a supplemental notice under RCW
39 34.05.340, the supplemental notice must include notification that a

1 revised preliminary cost-benefit analysis is available. A final cost-
2 benefit analysis must be available when the rule is adopted under RCW
3 34.05.360;

4 (d) Determine that the probable benefits of the rule are greater
5 than its probable costs, taking into account both the qualitative and
6 quantitative benefits and costs and the specific directives of the
7 statute being implemented;

8 (e) Determine, after considering alternative versions of the rule
9 and the analysis required under (b), (c), and (d) of this subsection,
10 that the rule being adopted is the least burdensome alternative for
11 those required to comply with it that will achieve the general goals
12 and specific objectives stated under (a) of this subsection;

13 (f) Determine that the rule does not require those to whom it
14 applies to take an action that violates requirements of another
15 federal or state law;

16 (g) Determine that the rule does not impose more stringent
17 performance requirements on private entities than on public entities
18 unless required to do so by federal or state law;

19 (h) Determine if the rule differs from any federal regulation or
20 statute applicable to the same activity or subject matter and, if so,
21 determine that the difference is justified by the following:

22 (i) A state statute that explicitly allows the agency to differ
23 from federal standards; or

24 (ii) Substantial evidence that the difference is necessary to
25 achieve the general goals and specific objectives stated under (a) of
26 this subsection; and

27 (i) Coordinate the rule, to the maximum extent practicable, with
28 other federal, state, and local laws applicable to the same activity
29 or subject matter.

30 (2) In making its determinations pursuant to subsection (1)(b)
31 through (h) of this section, the agency must place in the rule-making
32 file documentation of sufficient quantity and quality so as to
33 persuade a reasonable person that the determinations are justified.

34 (3) Before adopting rules described in subsection (5) of this
35 section, an agency must place in the rule-making file a rule
36 implementation plan for rules filed under each adopting order. The
37 plan must describe how the agency intends to:

38 (a) Implement and enforce the rule, including a description of
39 the resources the agency intends to use;

40 (b) Inform and educate affected persons about the rule;

1 (c) Promote and assist voluntary compliance; and

2 (d) Evaluate whether the rule achieves the purpose for which it
3 was adopted, including, to the maximum extent practicable, the use of
4 interim milestones to assess progress and the use of objectively
5 measurable outcomes.

6 (4) After adopting a rule described in subsection (5) of this
7 section regulating the same activity or subject matter as another
8 provision of federal or state law, an agency must do all of the
9 following:

10 (a) Coordinate implementation and enforcement of the rule with
11 the other federal and state entities regulating the same activity or
12 subject matter by making every effort to do one or more of the
13 following:

14 (i) Deferring to the other entity;

15 (ii) Designating a lead agency; or

16 (iii) Entering into an agreement with the other entities
17 specifying how the agency and entities will coordinate implementation
18 and enforcement.

19 If the agency is unable to comply with this subsection (4)(a),
20 the agency must report to the legislature pursuant to (b) of this
21 subsection;

22 (b) Report to the joint administrative rules review committee:

23 (i) The existence of any overlap or duplication of other federal
24 or state laws, any differences from federal law, and any known
25 overlap, duplication, or conflict with local laws; and

26 (ii) Make recommendations for any legislation that may be
27 necessary to eliminate or mitigate any adverse effects of such
28 overlap, duplication, or difference.

29 (5)(a) Except as provided in (b) of this subsection, this section
30 applies to:

31 (i) Significant legislative rules of the departments of ecology,
32 labor and industries, health, revenue, social and health services,
33 and natural resources, the employment security department, the forest
34 practices board, the office of the insurance commissioner, and to the
35 legislative rules of the department of fish and wildlife implementing
36 chapter 77.55 RCW; and

37 (ii) Any rule of any agency, if this section is voluntarily made
38 applicable to the rule by the agency, or is made applicable to the
39 rule by a majority vote of the joint administrative rules review

1 committee within forty-five days of receiving the notice of proposed
2 rule making under RCW 34.05.320.

3 (b) This section does not apply to:

4 (i) Emergency rules adopted under RCW 34.05.350;

5 (ii) Rules relating only to internal governmental operations that
6 are not subject to violation by a nongovernment party;

7 (iii) Rules adopting or incorporating by reference without
8 material change federal statutes or regulations, Washington state
9 statutes, rules of other Washington state agencies, shoreline master
10 programs other than those programs governing shorelines of statewide
11 significance, or, as referenced by Washington state law, national
12 consensus codes that generally establish industry standards, if the
13 material adopted or incorporated regulates the same subject matter
14 and conduct as the adopting or incorporating rule;

15 (iv) Rules that only correct typographical errors, make address
16 or name changes, or clarify language of a rule without changing its
17 effect;

18 (v) Rules the content of which is explicitly and specifically
19 dictated by statute;

20 (vi) Rules that set or adjust fees under the authority of RCW
21 19.02.075 or that set or adjust fees or rates pursuant to legislative
22 standards, including fees set or adjusted under the authority of RCW
23 19.80.045;

24 (vii) Rules of the department of social and health services
25 relating only to client medical or financial eligibility and rules
26 concerning liability for care of dependents; ((~~or~~))

27 (viii) Rules of the department of revenue that adopt a uniform
28 expiration date for reseller permits as authorized in RCW 82.32.780
29 and 82.32.783; or

30 (ix) Rules of the employment security department to implement RCW
31 49.86.060(1) or section 13(3) of this act.

32 (c) For purposes of this subsection:

33 (i) A "procedural rule" is a rule that adopts, amends, or repeals
34 (A) any procedure, practice, or requirement relating to any agency
35 hearings; (B) any filing or related process requirement for making
36 application to an agency for a license or permit; or (C) any policy
37 statement pertaining to the consistent internal operations of an
38 agency.

1 (ii) An "interpretive rule" is a rule, the violation of which
2 does not subject a person to a penalty or sanction, that sets forth
3 the agency's interpretation of statutory provisions it administers.

4 (iii) A "significant legislative rule" is a rule other than a
5 procedural or interpretive rule that (A) adopts substantive
6 provisions of law pursuant to delegated legislative authority, the
7 violation of which subjects a violator of such rule to a penalty or
8 sanction; (B) establishes, alters, or revokes any qualification or
9 standard for the issuance, suspension, or revocation of a license or
10 permit; or (C) adopts a new, or makes significant amendments to, a
11 policy or regulatory program.

12 (d) In the notice of proposed rule making under RCW 34.05.320, an
13 agency must state whether this section applies to the proposed rule
14 pursuant to (a)(i) of this subsection, or if the agency will apply
15 this section voluntarily.

16 (6) By January 31, 1996, and by January 31st of each even-
17 numbered year thereafter, the office of regulatory assistance, after
18 consulting with state agencies, counties, and cities, and business,
19 labor, and environmental organizations, must report to the governor
20 and the legislature regarding the effects of this section on the
21 regulatory system in this state. The report must document:

22 (a) The rules proposed to which this section applied and to the
23 extent possible, how compliance with this section affected the
24 substance of the rule, if any, that the agency ultimately adopted;

25 (b) The costs incurred by state agencies in complying with this
26 section;

27 (c) Any legal action maintained based upon the alleged failure of
28 any agency to comply with this section, the costs to the state of
29 such action, and the result;

30 (d) The extent to which this section has adversely affected the
31 capacity of agencies to fulfill their legislatively prescribed
32 mission;

33 (e) The extent to which this section has improved the
34 acceptability of state rules to those regulated; and

35 (f) Any other information considered by the office of financial
36 management to be useful in evaluating the effect of this section.

37 NEW SECTION. **Sec. 26.** RCW 49.86.100 (Employment by same
38 employer) and 2007 c 357 s 12 are each repealed.

1 NEW SECTION. **Sec. 27.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 28.** If any part of this act is found to be in
6 conflict with federal requirements that are a prescribed condition to
7 the allocation of federal funds to the state or the eligibility of
8 employers in this state for federal unemployment tax credits, the
9 conflicting part of this act is inoperative solely to the extent of
10 the conflict, and the finding or determination does not affect the
11 operation of the remainder of this act. Rules adopted under this act
12 must meet federal requirements that are a necessary condition to the
13 receipt of federal funds by the state or the granting of federal
14 unemployment tax credits to employers in this state.

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