
SUBSTITUTE SENATE BILL 6349

State of Washington

66th Legislature

2020 Regular Session

By Senate Labor & Commerce (originally sponsored by Senators Keiser, King, and Conway; by request of Employment Security Department)

1 AN ACT Relating to paid family and medical leave; amending RCW
2 50A.05.010, 50A.10.010, 50A.10.040, 50A.15.020, 50A.15.060,
3 50A.15.080, 50A.15.100, 50A.25.070, 50A.30.010, 50A.30.035,
4 50A.40.010, 50A.40.020, 50A.40.030, 50A.50.010, and 26.23.060; adding
5 new sections to chapter 50A.40 RCW; adding a new section to chapter
6 50A.05 RCW; and declaring an emergency.

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

8 **Sec. 1.** RCW 50A.05.010 and 2019 c 13 s 1 are each amended to
9 read as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this title.

12 (1)(a) "Casual labor" means work that:

13 (i) Is performed infrequently and irregularly; and

14 (ii) If performed for an employer, does not promote or advance
15 the employer's customary trade or business.

16 (b) For purposes of casual labor:

17 (i) "Infrequently" means work performed twelve or fewer times per
18 calendar quarter; and

19 (ii) "Irregularly" means work performed not on a consistent
20 cadence.

1 (2) "Child" includes a biological, adopted, or foster child, a
2 stepchild, a child's spouse, or a child to whom the employee stands
3 in loco parentis, is a legal guardian, or is a de facto parent,
4 regardless of age or dependency status.

5 ~~((2))~~ (3) "Commissioner" means the commissioner of the
6 department or the commissioner's designee.

7 ~~((3))~~ (4) "Department" means the employment security
8 department.

9 ~~((4))~~ (5)(a) "Employee" means an individual who is in the
10 employment of an employer.

11 (b) "Employee" does not include employees of the United States of
12 America.

13 ~~((5))~~ (6) "Employee's average weekly wage" means the quotient
14 derived by dividing the employee's total wages during the two
15 quarters of the employee's qualifying period in which total wages
16 were highest by twenty-six. If the result is not a multiple of one
17 dollar, the department must round the result to the next lower
18 multiple of one dollar.

19 ~~((6))~~ (7)(a) "Employer" means: (i) Any individual or type of
20 organization, including any partnership, association, trust, estate,
21 joint stock company, insurance company, limited liability company, or
22 corporation, whether domestic or foreign, or the receiver, trustee in
23 bankruptcy, trustee, or the legal representative of a deceased
24 person, having any person in employment or, having become an
25 employer, has not ceased to be an employer as provided in this title;
26 (ii) the state, state institutions, and state agencies; and (iii) any
27 unit of local government including, but not limited to, a county,
28 city, town, municipal corporation, quasi-municipal corporation, or
29 political subdivision.

30 (b) "Employer" does not include the United States of America.

31 ~~((7))~~ (8)(a) "Employment" means personal service, of whatever
32 nature, unlimited by the relationship of master and servant as known
33 to the common law or any other legal relationship performed for wages
34 or under any contract calling for the performance of personal
35 services, written or oral, express or implied. The term "employment"
36 includes an individual's entire service performed within or without
37 or both within and without this state, if:

38 (i) The service is localized in this state; or

39 (ii) The service is not localized in any state, but some of the
40 service is performed in this state; and

1 (A) The base of operations of the employee is in the state, or if
2 there is no base of operations, then the place from which such
3 service is directed or controlled is in this state; or

4 (B) The base of operations or place from which such service is
5 directed or controlled is not in any state in which some part of the
6 service is performed, but the individual's residence is in this
7 state.

8 (b) "Employment" does not include:

9 (i) Self-employed individuals;

10 (ii) Casual labor;

11 (iii) Services for remuneration when it is shown to the
12 satisfaction of the commissioner that:

13 (A) (I) Such 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; and

16 (II) Such 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; and

20 (III) Such individual is customarily engaged in an independently
21 established trade, occupation, profession, or business, of the same
22 nature as that involved in the contract of service; or

23 (B) As a separate alternative:

24 (I) Such individual has been and will continue to be free from
25 control or direction over the performance of such service, both under
26 his or her contract of service and in fact; and

27 (II) Such service is either outside the usual course of business
28 for which such service is performed, or that such service is
29 performed outside of all the places of business of the enterprises
30 for which such service is performed, or the individual is
31 responsible, both under the contract and in fact, for the costs of
32 the principal place of business from which the service is performed;
33 and

34 (III) Such individual is customarily engaged in an independently
35 established trade, occupation, profession, or business, of the same
36 nature as that involved in the contract of service, or such
37 individual has a principal place of business for the work the
38 individual is conducting that is eligible for a business deduction
39 for federal income tax purposes; and

1 (IV) On the effective date of the contract of service, such
2 individual is responsible for filing at the next applicable filing
3 period, both under the contract of service and in fact, a schedule of
4 expenses with the internal revenue service for the type of business
5 the individual is conducting; and

6 (V) On the effective date of the contract of service, or within a
7 reasonable period after the effective date of the contract, such
8 individual has established an account with the department of revenue,
9 and other state agencies as required by the particular case, for the
10 business the individual is conducting for the payment of all state
11 taxes normally paid by employers and businesses and has registered
12 for and received a unified business identifier number from the state
13 of Washington; and

14 (VI) On the effective date of the contract of service, such
15 individual is maintaining a separate set of books or records that
16 reflect all items of income and expenses of the business which the
17 individual is conducting; or

18 (~~(iii)~~) (iv) Services that require registration under chapter
19 18.27 RCW or licensing under chapter 19.28 RCW rendered by an
20 individual when:

21 (A) The individual has been and will continue to be free from
22 control or direction over the performance of the service, both under
23 the contract of service and in fact;

24 (B) The service is either outside the usual course of business
25 for which the service is performed, or the service is performed
26 outside of all the places of business of the enterprise for which the
27 service is performed, or the individual is responsible, both under
28 the contract and in fact, for the costs of the principal place of
29 business from which the service is performed;

30 (C) The individual is customarily engaged in an independently
31 established trade, occupation, profession, or business, of the same
32 nature as that involved in the contract of service, or the individual
33 has a principal place of business for the business the individual is
34 conducting that is eligible for a business deduction for federal
35 income tax purposes, other than that furnished by the employer for
36 which the business has contracted to furnish services;

37 (D) On the effective date of the contract of service, the
38 individual is responsible for filing at the next applicable filing
39 period, both under the contract of service and in fact, a schedule of

1 expenses with the internal revenue service for the type of business
2 the individual is conducting;

3 (E) On the effective date of the contract of service, or within a
4 reasonable period after the effective date of the contract, the
5 individual has an active and valid certificate of registration with
6 the department of revenue, and an active and valid account with any
7 other state agencies as required by the particular case, for the
8 business the individual is conducting for the payment of all state
9 taxes normally paid by employers and businesses and has registered
10 for and received a unified business identifier number from the state
11 of Washington;

12 (F) On the effective date of the contract of service, the
13 individual is maintaining a separate set of books or records that
14 reflect all items of income and expenses of the business that the
15 individual is conducting; and

16 (G) On the effective date of the contract of service, the
17 individual has a valid contractor registration pursuant to chapter
18 18.27 RCW or an electrical contractor license pursuant to chapter
19 19.28 RCW.

20 (~~(8)~~) (9) "Employment benefits" means all benefits provided or
21 made available to employees by an employer, including group life
22 insurance, health insurance, disability insurance, sick leave, annual
23 leave, educational benefits, and pensions.

24 (~~(9)~~) (10) "Family leave" means any leave taken by an employee
25 from work:

26 (a) To participate in providing care, including physical or
27 psychological care, for a family member of the employee made
28 necessary by a serious health condition of the family member;

29 (b) To bond with the employee's child during the first twelve
30 months after the child's birth, or the first twelve months after the
31 placement of a child under the age of eighteen with the employee; or

32 (c) Because of any qualifying exigency as permitted under the
33 federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(E)
34 and 29 C.F.R. Sec. 825.126(b)(1) through (9), as they existed on
35 October 19, 2017, for family members as defined in subsection (10) of
36 this section.

37 (~~(10)~~) (11) "Family member" means a child, grandchild,
38 grandparent, parent, sibling, or spouse of an employee.

39 (~~(11)~~) (12) "Grandchild" means a child of the employee's child.

1 ~~((12))~~ (13) "Grandparent" means a parent of the employee's
2 parent.

3 ~~((13))~~ (14) "Health care provider" means: (a) A person licensed
4 as a physician under chapter 18.71 RCW or an osteopathic physician
5 and surgeon under chapter 18.57 RCW; (b) a person licensed as an
6 advanced registered nurse practitioner under chapter 18.79 RCW; or
7 (c) any other person determined by the commissioner to be capable of
8 providing health care services.

9 ~~((14))~~ (15) "Medical leave" means any leave taken by an
10 employee from work made necessary by the employee's own serious
11 health condition.

12 ~~((15))~~ (16) "Paid time off" includes vacation leave, personal
13 leave, medical leave, sick leave, compensatory leave, or any other
14 paid leave offered by an employer under the employer's established
15 policy.

16 (17) "Parent" means the biological, adoptive, de facto, or foster
17 parent, stepparent, or legal guardian of an employee or the
18 employee's spouse, or an individual who stood in loco parentis to an
19 employee when the employee was a child.

20 ~~((16))~~ (18) "Period of incapacity" means an inability to work,
21 attend school, or perform other regular daily activities because of a
22 serious health condition, treatment of that condition or recovery
23 from it, or subsequent treatment in connection with such inpatient
24 care.

25 ~~((17))~~ (19) "Premium" or "premiums" means the payments required
26 by RCW 50A.10.030 and paid to the department for deposit in the
27 family and medical leave insurance account under RCW 50A.05.070.

28 ~~((18))~~ (20) "Qualifying period" means the first four of the
29 last five completed calendar quarters or, if eligibility is not
30 established, the last four completed calendar quarters immediately
31 preceding the application for leave.

32 ~~((19))~~ (21) (a) "Remuneration" means all compensation paid for
33 personal services including commissions and bonuses and the cash
34 value of all compensation paid in any medium other than cash.

35 (b) Previously accrued compensation, other than severance pay or
36 payments received pursuant to plant closure agreements, when assigned
37 to a specific period of time by virtue of a collective bargaining
38 agreement, individual employment contract, customary trade practice,
39 or request of the individual compensated, is considered remuneration
40 for the period to which it is assigned. Assignment clearly occurs

1 when the compensation serves to make the individual eligible for all
2 regular fringe benefits for the period to which the compensation is
3 assigned.

4 (c) Remuneration also includes settlements or other proceeds
5 received by an individual as a result of a negotiated settlement for
6 termination of an individual written employment contract prior to its
7 expiration date. The proceeds are deemed assigned in the same
8 intervals and in the same amount for each interval as compensation
9 was allocated under the contract.

10 (d) Remuneration does not include:

11 (i) The payment of tips;

12 (ii) Supplemental benefit payments made by an employer to an
13 employee in addition to any paid family or medical leave benefits
14 received by the employee; or

15 (iii) Payments to members of the armed forces of the United
16 States, including the organized militia of the state of Washington,
17 for the performance of duty for periods not exceeding seventy-two
18 hours at a time.

19 (~~((20))~~) (22)(a) "Serious health condition" means an illness,
20 injury, impairment, or physical or mental condition that involves:

21 (i) Inpatient care in a hospital, hospice, or residential medical
22 care facility, including any period of incapacity; or

23 (ii) Continuing treatment by a health care provider. A serious
24 health condition involving continuing treatment by a health care
25 provider includes any one or more of the following:

26 (A) A period of incapacity of more than three consecutive, full
27 calendar days, and any subsequent treatment or period of incapacity
28 relating to the same condition, that also involves:

29 (I) Treatment two or more times, within thirty days of the first
30 day of incapacity, unless extenuating circumstances exist, by a
31 health care provider, by a nurse or physician's assistant under
32 direct supervision of a health care provider, or by a provider of
33 health care services, such as a physical therapist, under orders of,
34 or on referral by, a health care provider; or

35 (II) Treatment by a health care provider on at least one occasion
36 which results in a regimen of continuing treatment under the
37 supervision of the health care provider;

38 (B) Any period of incapacity due to pregnancy, or for prenatal
39 care;

1 (C) Any period of incapacity or treatment for such incapacity due
2 to a chronic serious health condition. A chronic serious health
3 condition is one which:

4 (I) Requires periodic visits, defined as at least twice a year,
5 for treatment by a health care provider, or by a nurse under direct
6 supervision of a health care provider;

7 (II) Continues over an extended period of time, including
8 recurring episodes of a single underlying condition; and

9 (III) May cause episodic rather than a continuing period of
10 incapacity, including asthma, diabetes, and epilepsy;

11 (D) A period of incapacity which is permanent or long term due to
12 a condition for which treatment may not be effective. The employee or
13 family member must be under the continuing supervision of, but need
14 not be receiving active treatment by, a health care provider,
15 including Alzheimer's, a severe stroke, or the terminal stages of a
16 disease; or

17 (E) Any period of absence to receive multiple treatments,
18 including any period of recovery from the treatments, by a health
19 care provider or by a provider of health care services under orders
20 of, or on referral by, a health care provider, either for: (I)
21 Restorative surgery after an accident or other injury; or (II) a
22 condition that would likely result in a period of incapacity of more
23 than three consecutive, full calendar days in the absence of medical
24 intervention or treatment, such as cancer, severe arthritis, or
25 kidney disease.

26 (b) The requirement in (a)(i) and (ii) of this subsection for
27 treatment by a health care provider means an in-person visit to a
28 health care provider. The first, or only, in-person treatment visit
29 must take place within seven days of the first day of incapacity.

30 (c) Whether additional treatment visits or a regimen of
31 continuing treatment is necessary within the thirty-day period shall
32 be determined by the health care provider.

33 (d) The term extenuating circumstances in (a)(ii)(A)(I) of this
34 subsection means circumstances beyond the employee's control that
35 prevent the follow-up visit from occurring as planned by the health
36 care provider. Whether a given set of circumstances are extenuating
37 depends on the facts. For example, extenuating circumstances exist if
38 a health care provider determines that a second in-person visit is
39 needed within the thirty-day period, but the health care provider
40 does not have any available appointments during that time period.

1 (e) Treatment for purposes of (a) of this subsection includes,
2 but is not limited to, examinations to determine if a serious health
3 condition exists and evaluations of the condition. Treatment does not
4 include routine physical examinations, eye examinations, or dental
5 examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of
6 continuing treatment includes, but is not limited to, a course of
7 prescription medication, such as an antibiotic, or therapy requiring
8 special equipment to resolve or alleviate the health condition, such
9 as oxygen. A regimen of continuing treatment that includes taking
10 over-the-counter medications, such as aspirin, antihistamines, or
11 salves, or bed rest, drinking fluids, exercise, and other similar
12 activities that can be initiated without a visit to a health care
13 provider, is not, by itself, sufficient to constitute a regimen of
14 continuing treatment for purposes of this title.

15 (f) Conditions for which cosmetic treatments are administered,
16 such as most treatments for acne or plastic surgery, are not serious
17 health conditions unless inpatient hospital care is required or
18 unless complications develop. Ordinarily, unless complications arise,
19 the common cold, the flu, ear aches, upset stomach, minor ulcers,
20 headaches other than migraines, routine dental or orthodontia
21 problems, and periodontal disease are examples of conditions that are
22 not serious health conditions and do not qualify for leave under this
23 title. Restorative dental or plastic surgery after an injury or
24 removal of cancerous growths are serious health conditions provided
25 all the other conditions of this section are met. Mental illness
26 resulting from stress or allergies may be serious health conditions,
27 but only if all the conditions of this section are met.

28 (g)(i) Substance abuse may be a serious health condition if the
29 conditions of this section are met. However, leave may only be taken
30 for treatment for substance abuse by a health care provider or by a
31 licensed substance abuse treatment provider. Absence because of the
32 employee's use of the substance, rather than for treatment, does not
33 qualify for leave under this title.

34 (ii) Treatment for substance abuse does not prevent an employer
35 from taking employment action against an employee. The employer may
36 not take action against the employee because the employee has
37 exercised his or her right to take medical leave for treatment.
38 However, if the employer has an established policy, applied in a
39 nondiscriminatory manner that has been communicated to all employees,
40 that provides under certain circumstances an employee may be

1 terminated for substance abuse, pursuant to that policy the employee
2 may be terminated whether or not the employee is presently taking
3 medical leave. An employee may also take family leave to care for a
4 covered family member who is receiving treatment for substance abuse.
5 The employer may not take action against an employee who is providing
6 care for a covered family member receiving treatment for substance
7 abuse.

8 (h) Absences attributable to incapacity under (a)(ii)(B) or (C)
9 of this subsection qualify for leave under this title even though the
10 employee or the family member does not receive treatment from a
11 health care provider during the absence, and even if the absence does
12 not last more than three consecutive, full calendar days. For
13 example, an employee with asthma may be unable to report for work due
14 to the onset of an asthma attack or because the employee's health
15 care provider has advised the employee to stay home when the pollen
16 count exceeds a certain level. An employee who is pregnant may be
17 unable to report to work because of severe morning sickness.

18 ~~((21))~~ (23) "Service is localized in this state" has the same
19 meaning as described in RCW 50.04.120.

20 ~~((22))~~ (24) "Spouse" means a husband or wife, as the case may
21 be, or state registered domestic partner.

22 ~~((23))~~ (25) "State average weekly wage" means the most recent
23 average weekly wage calculated under RCW 50.04.355 and available on
24 January 1st of each year.

25 ~~((24))~~ (26) "Supplemental benefit payments" means payments made
26 by an employer to an employee as salary continuation or as paid time
27 off. Such payments must be in addition to any paid family or medical
28 leave benefits the employee is receiving.

29 (27) "Typical workweek hours" means:

30 (a) For an hourly employee, the average number of hours worked
31 per week by an employee (~~since the beginning of~~) within the
32 qualifying period; and

33 (b) Forty hours for a salaried employee, regardless of the number
34 of hours the salaried employee typically works.

35 ~~((25))~~ (28) "Wage" or "wages" means:

36 (a) For the purpose of premium assessment, the remuneration paid
37 by an employer to an employee. The maximum wages subject to a premium
38 assessment are those wages as set by the commissioner under RCW
39 50A.10.030;

1 (b) For the purpose of payment of benefits, the remuneration paid
2 by one or more employers to an employee for employment during the
3 employee's qualifying period. At the request of an employee, wages
4 may be calculated on the basis of remuneration payable. The
5 department shall notify each employee that wages are calculated on
6 the basis of remuneration paid, but at the employee's request a
7 redetermination may be performed and based on remuneration payable;
8 and

9 (c) For the purpose of a self-employed person electing coverage
10 under RCW 50A.10.010, the meaning is defined by rule.

11 **Sec. 2.** RCW 50A.10.010 and 2019 c 13 s 19 are each amended to
12 read as follows:

13 (1) For benefits payable beginning January 1, 2020, any self-
14 employed person, including a sole proprietor, independent contractor,
15 partner, or joint venturer, may elect coverage under this title for
16 an initial period of not less than three years and subsequent periods
17 of not less than one year immediately following a period of coverage.
18 Those electing coverage under this section must elect coverage for
19 both family leave and medical leave and are responsible for payment
20 of one hundred percent of all premiums assessed to an employee under
21 RCW 50A.10.030. The self-employed person must file a notice of
22 election in writing with the department, in a manner as required by
23 the department in rule. The self-employed person is eligible for
24 family and medical leave benefits after working eight hundred twenty
25 hours in the state during the qualifying period following the date of
26 filing the notice.

27 (2) A self-employed person who has elected coverage may withdraw
28 from coverage within thirty days after the end of each period of
29 coverage, or at such other times as the commissioner may adopt by
30 rule, by filing a notice of withdrawal in writing with the
31 commissioner, such withdrawal to take effect not sooner than thirty
32 days after filing the notice with the commissioner.

33 (3) The department may cancel elective coverage if the self-
34 employed person fails to make required payments or file reports. The
35 department may collect due and unpaid premiums and may levy an
36 additional premium for the remainder of the period of coverage. The
37 cancellation shall be effective no later than thirty days from the
38 date of the notice in writing advising the self-employed person of
39 the cancellation.

1 (4) Those electing coverage are considered employers or employees
2 where the context so dictates.

3 (5) For the purposes of this section, "independent contractor"
4 means an individual excluded from employment under RCW
5 50A.05.010(~~((7))~~) (8)(b) (~~((ii) and)~~) (iii) and (iv).

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

11 (7) The department shall adopt rules for determining the hours
12 worked and the wages of individuals who elect coverage under this
13 section and rules for enforcement of this section.

14 **Sec. 3.** RCW 50A.10.040 and 2019 c 13 s 22 are each amended to
15 read as follows:

16 (1) An employer may file an application with the department for a
17 conditional waiver for the payment of family and medical leave
18 premiums, assessed under RCW 50A.10.030, for any employee who (~~(is)~~):

19 (a) (~~(Physically based)~~) Primarily performs work outside of the
20 state;

21 (b) Is employed in the state on a limited or temporary work
22 schedule; and

23 (c) Is not expected to be employed in the state for eight hundred
24 twenty hours or more in a (~~(qualifying)~~) period of four consecutive
25 completed calendar quarters.

26 (2) (~~(The department must approve an application that has been~~
27 ~~signed by)~~) Both the employee and employer must sign the application
28 verifying their belief that the conditions in (~~(this)~~) subsection (1)
29 of this section will be met (~~(during the qualifying period)~~).

30 (3) If the (~~(employee exceeds the eight hundred twenty hours or~~
31 ~~more in a period of four consecutive complete calendar quarters)~~)
32 department finds any of the conditions in subsection (1) of this
33 section are no longer satisfied, or were not satisfied at any point
34 after a conditional waiver was approved and is in effect, the
35 department will consider the conditional waiver (~~(expires)~~) expired
36 and the employer and employee will be responsible for their shares of
37 all premiums that would have been paid during this period had the
38 waiver not been granted. Upon payment of the missed premiums, the
39 employee will be credited for the hours worked and will be eligible

1 for benefits under this title as if the premiums were originally
2 paid.

3 **Sec. 4.** RCW 50A.15.020 and 2019 c 13 s 3 are each amended to
4 read as follows:

5 (1) ~~((a))~~ Beginning January 1, 2020, family and medical leave
6 are available and benefits are payable to a qualified employee under
7 this section.

8 (a) Following a waiting period consisting of the first seven
9 consecutive calendar days, benefits are payable when family or
10 medical leave is required. However, no waiting period is required for
11 leave for the birth or placement of a child, or for leave because of
12 any qualifying exigency as defined under RCW 50A.05.010(10)(c). The
13 waiting period begins the previous Sunday of the week when an
14 otherwise eligible employee takes leave for the minimum claim
15 duration under subsection (2)(c) of this section. Eligible employees
16 may satisfy the waiting period requirement while simultaneously
17 receiving paid time off for any part of the waiting period.

18 (b) Benefits may continue during the continuance of the need for
19 family ~~((and))~~ or medical leave, subject to the maximum and minimum
20 weekly benefits, duration, and other conditions and limitations
21 established in this title. ~~((Successive periods of family and medical~~
22 ~~leave caused by the same or related injury or sickness are deemed a~~
23 ~~single period of family and medical leave only if separated by less~~
24 ~~than four months.))~~

25 (2) The weekly benefit shall be prorated by the percentage of
26 hours on leave compared to the number of hours provided as the
27 typical workweek hours as defined in RCW 50A.05.010.

28 (a) The benefits in this section, if not a multiple of one
29 dollar, shall be reduced to the next lower multiple of one dollar.

30 (b) Hours on leave claimed for benefits under this title, if not
31 a multiple of one hour, shall be reduced to the next lower multiple
32 of one hour.

33 (c) The minimum claim duration payment is for eight consecutive
34 hours of leave.

35 (3)(a) The maximum duration of paid family leave may not exceed
36 twelve times the typical workweek hours during a period of fifty-two
37 consecutive calendar weeks.

38 (b) The maximum duration of paid medical leave may not exceed
39 twelve times the typical workweek hours during a period of fifty-two

1 consecutive calendar weeks. This leave may be extended an additional
2 two times the typical workweek hours if the employee experiences a
3 serious health condition with a pregnancy that results in incapacity.

4 (c) An employee is not entitled to paid family and medical leave
5 benefits under this title that exceeds a combined total of sixteen
6 times the typical workweek hours. The combined total of family and
7 medical leave may be extended to eighteen times the typical workweek
8 hours if the employee experiences a serious health condition with a
9 pregnancy that results in incapacity.

10 (4) The weekly benefit for family and medical leave shall be
11 determined as follows: If the employee's average weekly wage is: (a)
12 Equal to or less than one-half of the state average weekly wage, then
13 the benefit amount is equal to ninety percent of the employee's
14 average weekly wage; or (b) greater than one-half of the state
15 average weekly wage, then the benefit amount is the sum of: (i)
16 Ninety percent of one-half of the state average weekly wage; and (ii)
17 fifty percent of the difference of the employee's average weekly wage
18 and one-half of the state average weekly wage.

19 (5) (a) The maximum weekly benefit for family and medical leave
20 that occurs on or after January 1, 2020, shall be one thousand
21 dollars. By September 30, 2020, and by each subsequent September
22 30th, the commissioner shall adjust the maximum weekly benefit amount
23 to ninety percent of the state average weekly wage. The adjusted
24 maximum weekly benefit amount takes effect on the following January
25 1st.

26 (b) The minimum weekly benefit shall not be less than one hundred
27 dollars per week except that if the employee's average weekly wage at
28 the time of family (~~and~~) or medical leave is less than one hundred
29 dollars per week, the weekly benefit shall be the employee's full
30 wage.

31 **Sec. 5.** RCW 50A.15.060 and 2019 c 13 s 8 are each amended to
32 read as follows:

33 (1) An employee is not entitled to paid family or medical leave
34 benefits under this title:

35 (a) For any absence occasioned by the willful intention of the
36 employee to bring about injury to or the sickness of the employee or
37 another, or resulting from any injury or sickness sustained in the
38 perpetration by the employee of an illegal act;

1 (b) For any family or medical leave commencing before the
2 employee becomes qualified for benefits under this title;

3 (c) For an employee who is on suspension from his or her
4 employment; or

5 (d) For any period of time during which an employee works for
6 remuneration or profit.

7 (2) An employer may offer supplemental benefit payments to an
8 employee on family or medical leave in addition to any paid family or
9 medical leave benefits the employee is receiving. (~~Supplemental~~
10 ~~benefit payments include, but are not limited to, vacation, sick, or~~
11 ~~other paid time off.~~)

12 (a) Supplemental benefit payments are not considered remuneration
13 under RCW 50A.05.010(21) and the department will not prorate or
14 reduce an employee's weekly benefit amount due to the receipt of
15 supplemental benefit payments.

16 (b) The choice to receive supplemental benefit payments lies with
17 the employee. Nothing in this section shall be construed as requiring
18 an employee to receive or an employer to provide supplemental benefit
19 payments.

20 (3) An individual is disqualified for benefits for any week he or
21 she has knowingly and willfully made a false statement or
22 representation involving a material fact or knowingly and willfully
23 failed to report a material fact and, as a result, has obtained or
24 attempted to obtain any benefits under the provisions of this title.
25 An individual disqualified for benefits under this subsection (3) for
26 the:

27 (a) First time is disqualified for an additional twenty-six weeks
28 beginning with the Sunday of the week in which the determination is
29 mailed or delivered, and is subject to an additional penalty of
30 fifteen percent of the amount of benefits overpaid or deemed
31 overpaid;

32 (b) Second time is also disqualified for an additional fifty-two
33 weeks beginning with the Sunday of the week in which the
34 determination is mailed or delivered, and is subject to an additional
35 penalty of twenty-five percent of the amount of benefits overpaid or
36 deemed overpaid;

37 (c) Third time and any time thereafter is also disqualified for
38 an additional one hundred four weeks beginning with the Sunday of the
39 week in which the determination is mailed or delivered, and is

1 subject to an additional penalty of fifty percent of the amount of
2 benefits overpaid or deemed overpaid.

3 (4) All penalties collected under this section must be deposited
4 in the family and medical leave enforcement account created under RCW
5 50A.05.080.

6 **Sec. 6.** RCW 50A.15.080 and 2019 c 13 s 10 are each amended to
7 read as follows:

8 (1) If ((~~an~~)) the department determines an employee is qualified
9 for benefits and that the employee owes child support obligations
10 ((under RCW 50A.15.040 and)), the department ((determines that the
11 employee is qualified for benefits, the department shall notify the
12 applicable state or local child support enforcement agency and deduct
13 and withhold an amount from benefits in a manner consistent with RCW
14 50.40.050.)) shall notify the applicable state or local child support
15 enforcement agency and deduct and withhold an amount from benefits in
16 a manner consistent with RCW 50.40.050.

17 (2) For the purposes of this section, "child support obligations"
18 means only those obligations that are being enforced pursuant to a
19 plan described in section 454 of the social security act which has
20 been approved by the secretary of health and human services under
21 Title IV-D of the social security act (42 U.S.C. Sec. 651 et seq.).

22 (3) Consistent with ((RCW 50A.15.040(1)(e))) chapter 50A.25 RCW,
23 the department may verify child support obligations with the
24 department of social and health services.

25 **Sec. 7.** RCW 50A.15.100 and 2019 c 13 s 38 are each amended to
26 read as follows:

27 (1) Leave from employment under this title is in addition to
28 leave from employment during which benefits are paid or are payable
29 under Title 51 RCW or other applicable federal or state industrial
30 insurance laws.

31 (2) ((~~It~~)) An employee is disqualified from receiving family or
32 medical leave benefits under this title for any week in which ((~~an~~))
33 the employee is ((eligible to receive benefits)) receiving, has
34 received, or will receive compensation, as determined by the
35 governing state or federal agency under:

36 (a) Title 50 ((~~or 51~~)) RCW((~~, or~~));

37 (b) RCW 51.32.060;

38 (c) RCW 51.32.090; or

1 (d) Any other applicable federal (~~or state~~) unemployment
2 compensation, industrial insurance, or disability insurance laws (~~(7~~
3 ~~the employee is disqualified from receiving family or medical leave~~
4 ~~benefits under this title)~~).

5 **Sec. 8.** RCW 50A.25.070 and 2019 c 13 s 76 are each amended to
6 read as follows:

7 (1) The department may enter into data-sharing contracts and may
8 disclose records and information deemed confidential to state or
9 local government agencies under this chapter only if permitted under
10 subsection (2) of this section and RCW 50A.25.090. A state or local
11 government agency must need the records or information for an
12 official purpose and must also provide:

13 (a) An application in writing to the department for the records
14 or information containing a statement of the official purposes for
15 which the state or local government agency needs the information or
16 records and specifically identify the records or information sought
17 from the department; and

18 (b) A written verification of the need for the specific
19 information from the director, commissioner, chief executive, or
20 other official of the requesting state or local government agency
21 either on the application or on a separate document.

22 (2) The department may disclose information or records deemed
23 confidential under this chapter to the following state or local
24 government agencies:

25 (a) To the department of social and health services to identify
26 child support obligations as defined in RCW 50A.15.080;

27 (b) To the department of revenue to determine potential tax
28 liability or employer compliance with registration and licensing
29 requirements;

30 (c) To the department of labor and industries to compare records
31 or information to detect improper or fraudulent claims;

32 (d) To the office of financial management for the purpose of
33 conducting periodic salary or fringe benefit studies pursuant to law;

34 (e) To the office of the state treasurer and any financial or
35 banking institutions deemed necessary by the office of the state
36 treasurer and the department for the proper administration of funds;

37 (f) To the office of the attorney general for purposes of legal
38 representation;

1 (g) To a county clerk for the purpose of RCW 9.94A.760 if
2 requested by the county clerk's office;

3 (h) To the office of administrative hearings for the purpose of
4 administering the administrative appeal process;

5 (i) To the department of enterprise services for the purpose of
6 agency administration and operations; and

7 (j) To the consolidated technology services agency for the
8 purpose of enterprise technology support.

9 **Sec. 9.** RCW 50A.30.010 and 2019 c 13 s 56 are each amended to
10 read as follows:

11 (1) An employer may apply to the commissioner for approval of a
12 voluntary plan for the payment of either family leave benefits or
13 medical leave benefits, or both. The application must be submitted on
14 a form and in the manner as prescribed by the commissioner in rule.
15 The fee for the department's review of each application for approval
16 of a voluntary plan is two hundred fifty dollars.

17 (2) The benefits payable as indemnification for loss of wages
18 under any voluntary plan must be separately stated and designated
19 separately and distinctly in the plan from other benefits, if any.

20 (3) Neither an employee nor his or her employer are liable for
21 any premiums for benefits covered by an approved voluntary plan.

22 (4) An employee may only receive payment of benefits for family
23 leave, medical leave, or both from one approved plan at a time. An
24 employee who qualifies for benefits and is simultaneously covered by
25 more than one plan under this title will receive benefits under the
26 plan for which the employee has worked the most hours during the
27 employee's qualifying period. The commissioner must adopt rules to
28 allow benefits or prevent duplication of benefits to employees
29 simultaneously covered by one or more approved voluntary plans and
30 the state program.

31 (5) The commissioner must approve any voluntary plan as to which
32 the commissioner finds that there is at least one employee in
33 employment and all of the following exist:

34 (a) The benefits afforded to the employees must be at least
35 equivalent to the benefits the employees are entitled to as part of
36 the state's family and medical leave program, including but not
37 limited to the duration of leave. The employer must offer at least
38 one-half of the length of leave as provided in RCW 50A.15.020(3) with
39 pay and provide a monetary payment in an amount equal to or higher

1 than the total amount of monetary benefits the employee would be
2 entitled to receive as part of the state-run program. The employer
3 may offer the same duration of leave and monetary benefits as offered
4 under the state program.

5 (b) The sick leave an employee is entitled to under RCW 49.46.210
6 is in addition to the employer's provided benefits and is in addition
7 to any family (~~and~~) or medical leave benefits.

8 (c) The plan is available to all of the eligible employees of the
9 employer employed in this state, including future employees.

10 (d) The employer has agreed to make (~~the~~) all required payroll
11 deductions (~~required, if any, and transmit the proceeds to the~~
12 ~~department for any portions not collected for the voluntary plan~~),
13 including that:

14 (i) In the case of plan termination or withdrawal, the employer
15 must remit to the department all required moneys under RCW 50A.30.045
16 and 50A.30.065(3); and

17 (ii) If the employer has an approved voluntary plan for either
18 medical leave or family leave but not both, the employer is still
19 obligated to remit to the department premiums owed to the state plan
20 for the portions not covered by the employer's approved voluntary
21 plan.

22 (e) The plan will be in effect for a period of not less than one
23 year and, thereafter, continuously unless the commissioner finds that
24 the employer has given notice of withdrawal from the plan in a manner
25 specified by the commissioner in rule. The plan may be withdrawn by
26 the employer on the date of any law increasing the benefit amounts or
27 the date of any change in the rate of employee premiums, if notice of
28 the withdrawal from the plan is transmitted to the commissioner not
29 less than thirty days prior to the date of that law or change. If the
30 plan is not withdrawn, it must be amended to conform to provide the
31 increased benefit amount or change in the rate of the employee's
32 premium on the date of the increase or change.

33 (f) The amount of payroll deductions from the wages of an
34 employee in effect for any voluntary plan may not exceed the maximum
35 payroll deduction for that employee as authorized under RCW
36 50A.10.030. The deductions may not be increased on other than an
37 anniversary of the effective date of the plan, except to the extent
38 that any increase in the deductions from the wages of an employee do
39 not exceed the maximum rate authorized under the state program.

1 (g) The voluntary plan provides that an employee of an employer
2 with a voluntary plan for either family leave or medical leave, or
3 both, is eligible for the plan benefits if the employee meets the
4 requirements of RCW 50A.15.010 and has worked at least three hundred
5 forty hours for the employer during the twelve months immediately
6 preceding the date leave will commence.

7 (h) The voluntary plan provides that an employee of an employer
8 with a voluntary plan for either family leave or medical leave, or
9 both, who takes leave under the voluntary plan is entitled to the
10 employment protection provisions contained in RCW 50A.35.010 if the
11 employee has worked for the employer for at least nine months and
12 nine hundred sixty-five hours during the twelve months immediately
13 preceding the date leave will commence.

14 (i) The voluntary plan provides that the employer maintains the
15 employee's existing health benefits as provided under RCW 50A.35.020.

16 (6) (a) The department must conduct a review of the expenses
17 incurred in association with the administration of the voluntary
18 plans during the first three years after implementation and report
19 its findings to the legislature.

20 (b) The review must include an analysis of the adequacy of the
21 fee in subsection (1) of this section to cover the department's
22 administrative expenses related to reviewing and approving or denying
23 the applications and administering appeals related to voluntary
24 plans. The review must include an estimate of the next year's
25 projected administrative costs related to the voluntary plans. The
26 legislature shall adjust the fee in subsection (1) of this section as
27 needed to ensure the department's administrative expenses related to
28 the voluntary plans are covered by the fee.

29 (c) If the current receipts from the fee in subsection (1) of
30 this section are inadequate to cover the department's administrative
31 expenses related to the voluntary plans, the department may use funds
32 from the family and medical leave insurance account under RCW
33 50A.05.070 to pay for these expenses.

34 **Sec. 10.** RCW 50A.30.035 and 2017 3rd sp.s. c 5 s 25 are each
35 amended to read as follows:

36 An employer with a voluntary plan must provide a notice prepared
37 by or approved by the commissioner regarding the voluntary plan
38 consistent with the provisions of RCW (~~50A.04.075~~) 50A.20.020.

1 **Sec. 11.** RCW 50A.40.010 and 2019 c 13 s 15 are each amended to
2 read as follows:

3 (1) It is unlawful for any employer to:

4 (a) Interfere with, restrain, or deny the exercise of, or the
5 attempt to exercise, any valid right provided under this title; or

6 (b) Discharge or in any other manner discriminate against any
7 employee for opposing any practice made unlawful by this title.

8 (2) It is unlawful for any person to discharge or in any other
9 manner discriminate against any employee because the employee has:

10 (a) Filed any complaint, or has instituted or caused to be
11 instituted any proceeding, under or related to this title;

12 (b) Given, or is about to give, any information in connection
13 with any inquiry or proceeding relating to any right provided under
14 this title; or

15 (c) Testified, or is about to testify, in any inquiry or
16 proceeding relating to any right provided under this title.

17 (3) As provided in RCW 50A.40.020 and 50A.40.030, the department
18 will investigate allegations of unlawful acts and determine damages,
19 as necessary.

20 **Sec. 12.** RCW 50A.40.020 and 2019 c 13 s 17 are each amended to
21 read as follows:

22 (1) An employee who alleges one or more unlawful acts under RCW
23 50A.40.010 have occurred may file a complaint with the department.
24 The department may not investigate any alleged violation of RCW
25 50A.40.010 that occurred more than three years before the date the
26 employee filed the complaint.

27 (2) Upon receipt of a complaint ((by an employee)) under
28 subsection (1) of this section, the commissioner shall investigate to
29 determine if ((there has been compliance with RCW 50A.40.010 and the
30 related rules. The department will issue a determination including
31 the findings of the investigation and whether a violation may have
32 occurred. Determinations are appealable under chapter 50A.50 RCW. If
33 the investigation indicates that a violation may have occurred, a
34 hearing may be held if requested by an interested party in accordance
35 with chapter 34.05 RCW. The commissioner must issue a written
36 determination including the commissioner's findings after the
37 hearing. A judicial appeal from the commissioner's determination may
38 be taken in accordance with chapter 34.05 RCW)) a violation occurred

1 and the amount of any liquidated damages, unless the employee
2 terminates the complaint under section 16 of this act.

3 (3) Upon completing an investigation, the commissioner shall
4 issue a determination, unless the complaint is otherwise resolved
5 upon agreement by all parties and in compliance with section 16(6) of
6 this act or withdrawn under section 16(5) of this act. If the
7 department determines a violation occurred, the department may order
8 the employer to pay liquidated damages under RCW 50A.40.030.

9 **Sec. 13.** RCW 50A.40.030 and 2019 c 13 s 18 are each amended to
10 read as follows:

11 (1) Any employer who violates RCW 50A.40.010 is liable for
12 damages ((equal to:

13 ~~(1) The amount of:~~

14 ~~(a))).~~

15 (2) Damages are owed to the employee and must be paid by the
16 employer to the employee directly.

17 (3) (a) Damages include:

18 (i) Any wages, salary, employment benefits, or other compensation
19 denied or lost to such employee by reason of the violation; or

20 ~~((b))~~ (ii) In a case in which wages, salary, employment
21 benefits, or other compensation have not been denied or lost to the
22 employee, any actual monetary losses sustained by the employee as a
23 direct result of the violation, such as the cost of providing care,
24 up to a sum equal to wages or salary for the employee for up to
25 sixteen weeks, or eighteen weeks if the employee experiences a
26 serious health condition with a pregnancy that results in incapacity.

27 ~~((2) (a) The interest on the amount described in subsection (1)~~
28 ~~of this section calculated at the prevailing rate; and)~~

29 (b) Any employer who violates RCW 50A.40.010 is also liable for
30 interest accrued on the damages assessed in this subsection.

31 (4) For a willful violation, the employer is also liable for an
32 additional amount as liquidated damages equal to the sum of the
33 amount described in subsection ((1)) (3) (a) of this section and the
34 interest described in ((this)) subsection ((2)) (3) (b) of this
35 section. For purposes of this section, "willful" means a knowing and
36 intentional action that is neither accidental nor the result of a
37 bona fide dispute. All liquidated damages are owed to the employee
38 and must be paid to the employee directly.

1 (5) Interest in this section is calculated at the prevailing
2 rate.

3 **Sec. 14.** RCW 50A.50.010 and 2018 c 141 s 3 are each amended to
4 read as follows:

5 (1) Any aggrieved (~~person~~) party may file an appeal from any
6 determination or redetermination with the commissioner within thirty
7 days after the date of notification or mailing, whichever is earlier,
8 of such determination or redetermination to the (~~person's~~) party's
9 last known address. If an appeal with respect to any determination is
10 pending as of the date when a redetermination is issued, such appeal,
11 unless withdrawn, shall be treated as an appeal from such
12 redetermination.

13 (2) Any appeal from a determination of denial of benefits shall
14 be deemed to be an appeal as to all weeks subsequent to the effective
15 date of the denial for which benefits have already been denied. If no
16 appeal is taken from any determination, or redetermination, within
17 the time allowed by the provisions of this section for appeal, the
18 determination or redetermination, as the case may be, shall be
19 conclusively deemed to be correct except as provided in respect to
20 reconsideration by the commissioner of any determination.

21 (3) Upon receipt of a notice of appeal, the commissioner shall
22 request the assignment of an administrative law judge under chapter
23 34.12 RCW to conduct a hearing in accordance with chapter 34.05 RCW
24 and issue a proposed order.

25 **Sec. 15.** RCW 26.23.060 and 2019 c 13 s 66 are each amended to
26 read as follows:

27 (1) The division of child support may issue a notice of payroll
28 deduction:

29 (a) As authorized by a support order that contains a notice
30 clearly stating that child support may be collected by withholding
31 from earnings, wages, or benefits without further notice to the
32 obligated parent; or

33 (b) After service of a notice containing an income-withholding
34 provision under this chapter or chapter 74.20A RCW.

35 (2) The division of child support shall serve a notice of payroll
36 deduction upon a responsible parent's employer or upon the employment
37 security department for the state in possession of or owing any
38 benefits from the unemployment compensation fund to the responsible

1 parent pursuant to Title 50 RCW or from the paid family and medical
2 leave program under Title 50A RCW:

3 (a) In the manner prescribed for the service of a summons in a
4 civil action;

5 (b) By certified mail, return receipt requested;

6 (c) By electronic means if there is an agreement between the
7 secretary and the person, firm, corporation, association, political
8 subdivision, department of the state, or agency, subdivision, or
9 instrumentality of the United States to accept service by electronic
10 means; or

11 (d) By regular mail to a responsible parent's employer unless the
12 division of child support reasonably believes that service of process
13 in the manner prescribed in (a) or (b) of this subsection is required
14 for initiating an action to ensure employer compliance with the
15 withholding requirement.

16 (3) Service of a notice of payroll deduction upon an employer or
17 employment security department requires the employer or employment
18 security department to immediately make a mandatory payroll deduction
19 from the responsible parent's unpaid disposable earnings or
20 (~~unemployment compensation~~) benefits paid by the employment
21 security department. The employer or employment security department
22 shall thereafter deduct each pay period the amount stated in the
23 notice divided by the number of pay periods per month. The payroll
24 deduction each pay period shall not exceed fifty percent of the
25 responsible parent's disposable earnings.

26 (4) A notice of payroll deduction for support shall have priority
27 over any wage assignment, garnishment, attachment, or other legal
28 process.

29 (5) The notice of payroll deduction shall be in writing and
30 include:

31 (a) The name and social security number of the responsible
32 parent;

33 (b) The amount to be deducted from the responsible parent's
34 disposable earnings each month, or alternate amounts and frequencies
35 as may be necessary to facilitate processing of the payroll
36 deduction;

37 (c) A statement that the total amount withheld shall not exceed
38 fifty percent of the responsible parent's disposable earnings;

39 (d) The address to which the payments are to be mailed or
40 delivered; and

1 (e) A notice to the responsible parent warning the responsible
2 parent that, despite the payroll deduction, the responsible parent's
3 privileges to obtain and maintain a license, as defined in RCW
4 74.20A.320, may not be renewed, or may be suspended if the parent is
5 not in compliance with a support order as defined in RCW 74.20A.320.

6 (6) An informational copy of the notice of payroll deduction
7 shall be mailed to the last known address of the responsible parent
8 by regular mail.

9 (7) An employer or employment security department that receives a
10 notice of payroll deduction shall make immediate deductions from the
11 responsible parent's unpaid disposable earnings and remit proper
12 amounts to the Washington state support registry within seven working
13 days of the date the earnings are payable to the responsible parent.

14 (8) An employer, or the employment security department, upon whom
15 a notice of payroll deduction is served, shall make an answer to the
16 division of child support within twenty days after the date of
17 service. The answer shall confirm compliance and institution of the
18 payroll deduction or explain the circumstances if no payroll
19 deduction is in effect. The answer shall also state whether the
20 responsible parent is employed by or receives earnings from the
21 employer or receives (~~unemployment compensation benefits~~) benefit
22 payments from the employment security department, whether the
23 employer or employment security department anticipates paying
24 earnings or (~~unemployment compensation~~) benefits and the amount of
25 earnings or benefit payments. If the responsible parent is no longer
26 employed, or receiving earnings from the employer, the answer shall
27 state the present employer's name and address, if known. If the
28 responsible parent is no longer receiving (~~unemployment compensation~~
29 ~~benefits~~) benefit payments from the employment security department,
30 the answer shall state the present employer's name and address, if
31 known.

32 The returned answer or a payment remitted to the division of
33 child support by the employer constitutes proof of service of the
34 notice of payroll deduction in the case where the notice was served
35 by regular mail.

36 (9) The employer may deduct a processing fee from the remainder
37 of the responsible parent's earnings after withholding under the
38 notice of payroll deduction, even if the remainder is exempt under
39 RCW 26.18.090. The processing fee may not exceed: (a) Ten dollars for

1 the first disbursement made to the Washington state support registry;
2 and (b) one dollar for each subsequent disbursement to the registry.

3 (10) The notice of payroll deduction shall remain in effect until
4 released by the division of child support, the court enters an order
5 terminating the notice and approving an alternate arrangement under
6 RCW 26.23.050, or until the employer no longer employs the
7 responsible parent and is no longer in possession of or owing any
8 earnings to the responsible parent. The employer shall promptly
9 notify the office of support enforcement when the employer no longer
10 employs the parent subject to the notice. For the employment security
11 department, the notice of payroll deduction shall remain in effect
12 until released by the division of child support or until the court
13 enters an order terminating the notice.

14 (11) The division of child support may use uniform interstate
15 withholding forms adopted by the United States department of health
16 and human services to take withholding actions under this section
17 whether the responsible parent is receiving earnings or unemployment
18 compensation in this state or in another state.

19 NEW SECTION. **Sec. 16.** A new section is added to chapter 50A.40
20 RCW to read as follows:

21 (1) If the department issues a determination under RCW 50A.40.020
22 that an employer owes liquidated damages, the employer must, within
23 thirty calendar days, either pay all damages owed or file an appeal
24 as provided in this title. Thereafter, all parties owed moneys may
25 initiate collection action against the employer by filing a warrant
26 with the clerk of any county within the state.

27 (a) The warrant may include all damages awarded to the employee
28 plus reasonable attorneys' fees for the collection action, reasonable
29 expert witness fees, and other reasonable costs of the action.

30 (b) For purposes of this section, thirty calendar days begins the
31 day the determination is issued.

32 (2) The department is not responsible for collection action
33 against an employer that has defaulted the payment of an award
34 established under RCW 50A.40.030.

35 NEW SECTION. **Sec. 17.** A new section is added to chapter 50A.40
36 RCW to read as follows:

1 (1) A private action to recover damages under RCW 50A.40.030 may
2 be brought against any employer by any one or more employees for and
3 on behalf of:

4 (a) The employee or employees; or

5 (b) The employees and other employees similarly situated.

6 (2) Any action under subsection (1) of this section must be filed
7 with a court of competent jurisdiction within the state. Any private
8 action for an alleged violation of RCW 50A.40.010 must be commenced
9 within three years of the date of the alleged violation.

10 (3) In an action under subsection (1) of this section the court
11 shall, in addition to any judgment awarded to a prevailing plaintiff,
12 award reasonable attorneys' fees, reasonable expert witness fees, and
13 other costs of the action to be paid by the defendant.

14 (4) A private right of action is only available to an employee
15 who either has not filed a complaint with the department, has
16 withdrawn a filed complaint under subsection (5) of this section, or
17 has resolved a complaint under subsection (6) of this section.

18 (5) An employee who has filed a complaint with the department
19 under RCW 50A.40.020 may elect to withdraw the complaint by providing
20 written notice to the department within ten business days after
21 filing the complaint with the department. Withdrawing a complaint
22 terminates the department's administrative action.

23 (6) A complaint may be resolved upon agreement by all parties.
24 Resolution of a complaint must be communicated to the department
25 prior to the department's issuance of a determination. Resolution of
26 a complaint terminates the department's administrative action.

27 (7) In the event the department's administrative action is
28 terminated under subsection (5) or (6) of this section:

29 (a) The department will immediately discontinue its investigation
30 and any action against the employer; and

31 (b) The determination, if already issued, along with any related
32 findings of fact and conclusions of law, and any payments or offers
33 of payment made by the employer including interest, are not
34 admissible in any court action or other judicial or administrative
35 proceeding.

36 (8) Nothing in this section shall be construed to limit or
37 affect:

38 (a) Except as provided in subsection (4) of this section, the
39 right of any employee to pursue any judicial, administrative, or
40 other action available with respect to an employer;

1 (b) The right of the department to pursue any judicial,
2 administrative, or other action available with respect to an employee
3 that is identified as a result of a complaint under RCW 50A.40.020;
4 or

5 (c) The right of the department to pursue any judicial,
6 administrative, or other action available with respect to an employer
7 in the absence of a complaint.

8 NEW SECTION. **Sec. 18.** A new section is added to chapter 50A.05
9 RCW to read as follows:

10 (1) In the discharge of the duties imposed by this title, the
11 appeal tribunal and any duly authorized representative of the
12 commissioner shall have power to administer oaths and affirmations,
13 take depositions, certify to official acts, and issue subpoenas to
14 compel the attendance of witnesses and the production of books,
15 papers, correspondence, memoranda, and other records deemed necessary
16 as evidence in connection with any dispute or the administration of
17 this title. It shall be unlawful for any person, without just cause,
18 to fail to comply with subpoenas issued pursuant to the provisions of
19 this section.

20 (2)(a) Any authorized representative of the commissioner may
21 apply for and obtain a superior court order approving and authorizing
22 a subpoena in advance of its issuance. The application may be made in
23 the county where the subpoenaed person resides or is found, or the
24 county where the subpoenaed records or documents are located, or in
25 Thurston county. The application must:

26 (i) State that an order is sought pursuant to this subsection;
27 (ii) Adequately specify the records, documents, or testimony; and
28 (iii) Declare under oath that an investigation is being conducted
29 for a lawfully authorized purpose related to an investigation within
30 the department's authority and that the subpoenaed documents or
31 testimony are reasonably related to an investigation within the
32 department's authority.

33 (b) Where the application under this subsection is made to the
34 satisfaction of the court, the court must issue an order approving
35 the subpoena. An order under this subsection constitutes authority of
36 law for the department to subpoena the records or testimony.

37 (c) Any authorized representative of the commissioner may seek
38 approval and a court may issue an order under this subsection without

1 prior notice to any person, including the person to whom the subpoena
2 is directed and the person who is the subject of an investigation.

3 (3) Subsection (2) of this section is intended to comply with the
4 holdings of *State v. Miles*, 160 Wn.2d 236 (2007) and *State v. Reeder*,
5 184 Wn.2d 805 (2015), and Article I, section 7 of the state
6 Constitution. These provisions collectively require judicial review
7 of investigative subpoenas under certain circumstances. The
8 department is not required to receive court approval under subsection
9 (2) of this section unless otherwise required by law.

10 NEW SECTION. **Sec. 19.** Section 1 of this act is necessary for
11 the immediate preservation of the public peace, health, or safety, or
12 support of the state government and its existing public institutions,
13 and takes effect immediately.

--- END ---