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HOUSE BILL 3267

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State of Washington

60th Legislature

2008 Regular Session

By Representative Condotta

1 AN ACT Relating to the corporate officer provisions of the  
2 employment security act; amending RCW 50.12.070, 50.04.165, 50.04.310,  
3 50.04.080, and 50.04.090; creating a new section; repealing RCW  
4 50.24.230; and repealing 2007 c 146 s 4.

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

6 **Sec. 1.** RCW 50.12.070 and 2007 c 146 s 1 are each amended to read  
7 as follows:

8 (1)(a) Each employing unit shall keep true and accurate work  
9 records, containing such information as the commissioner may prescribe.  
10 Such records shall be open to inspection and be subject to being copied  
11 by the commissioner or his or her authorized representatives at any  
12 reasonable time and as often as may be necessary. The commissioner may  
13 require from any employing unit any sworn or unsworn reports with  
14 respect to persons employed by it, which he or she deems necessary for  
15 the effective administration of this title.

16 (b) An employer who contracts with another person or entity for  
17 work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a  
18 record of the unified business identifier account number for the person  
19 or entity performing the work. Failure to obtain or maintain the

1 record is subject to RCW 39.06.010 and to a penalty determined by the  
2 commissioner, but not to exceed two hundred fifty dollars, to be  
3 collected as provided in RCW 50.24.120.

4 (2)(a) Each employer shall register with the department and obtain  
5 an employment security account number. (~~Registration must include the~~  
6 ~~names and social security numbers of the owners, partners, members, or~~  
7 ~~corporate officers of the business, as well as their mailing addresses~~  
8 ~~and telephone numbers and other information the commissioner may by~~  
9 ~~rule prescribe. Registration of corporations must also include the~~  
10 ~~percentage of stock ownership for each corporate officer, delineated by~~  
11 ~~zero percent, less than ten percent, or ten percent or more. Any~~  
12 ~~changes in the owners, partners, members, or corporate officers of the~~  
13 ~~business, and changes in percentage of ownership of the outstanding~~  
14 ~~shares of stock of the corporation, must be reported to the department~~  
15 ~~at intervals prescribed by the commissioner under (b) of this~~  
16 ~~subsection.~~

17 ~~(b))~~ Each employer shall make periodic reports at such intervals  
18 as the commissioner may by regulation prescribe, setting forth the  
19 remuneration paid for employment to workers in its employ, the full  
20 names and social security numbers of all such workers, and the total  
21 hours worked by each worker and such other information as the  
22 commissioner may by regulation prescribe.

23 ~~((e))~~ (b) If the employing unit fails or has failed to report the  
24 number of hours in a reporting period for which a worker worked, such  
25 number will be computed by the commissioner and given the same force  
26 and effect as if it had been reported by the employing unit. In  
27 computing the number of such hours worked, the total wages for the  
28 reporting period, as reported by the employing unit, shall be divided  
29 by the dollar amount of the state's minimum wage in effect for such  
30 reporting period and the quotient, disregarding any remainder, shall be  
31 credited to the worker: PROVIDED, That although the computation so  
32 made will not be subject to appeal by the employing unit, monetary  
33 entitlement may be redetermined upon request if the department is  
34 provided with credible evidence of the actual hours worked. Benefits  
35 paid using computed hours are not considered an overpayment and are not  
36 subject to collections when the correction of computed hours results in  
37 an invalid or reduced claim; however:

1 (i) A contribution paying employer who fails to report the number  
2 of hours worked will have its experience rating account charged for all  
3 benefits paid that are based on hours computed under this subsection;  
4 and

5 (ii) An employer who reimburses the trust fund for benefits paid to  
6 workers and fails to report the number of hours worked shall reimburse  
7 the trust fund for all benefits paid that are based on hours computed  
8 under this subsection.

9 **Sec. 2.** RCW 50.04.165 and 1993 c 290 s 2 are each amended to read  
10 as follows:

11 Services performed by a person appointed as an officer of a  
12 corporation under RCW 23B.08.400, other than those covered by chapter  
13 50.44 RCW, shall not be considered services in employment. However, a  
14 corporation may elect to cover not less than all of its corporate  
15 officers under RCW 50.24.160. If an employer does not elect to cover  
16 its corporate officers under RCW 50.24.160, the employer must notify  
17 its corporate officers in writing that they are ineligible for  
18 unemployment benefits. However, if the employer fails to ((notify any  
19 corporate officer, then that person shall not be considered to be a  
20 corporate officer for the purposes of this section)) provide notice,  
21 the individual's status as a corporate officer is unchanged and the  
22 person remains ineligible for unemployment benefits.

23 **Sec. 3.** RCW 50.04.310 and 2007 c 146 s 5 are each amended to read  
24 as follows:

25 (1) An individual is "unemployed" in any week during which the  
26 individual performs no services and with respect to which no  
27 remuneration is payable to the individual, or in any week of less than  
28 full time work, if the remuneration payable to the individual with  
29 respect to such week is less than one and one-third times the  
30 individual's weekly benefit amount plus five dollars. The commissioner  
31 shall prescribe regulations applicable to unemployed individuals making  
32 such distinctions in the procedures as to such types of unemployment as  
33 the commissioner deems necessary.

34 (2) An individual is not "unemployed" during any week which falls  
35 totally within a period during which the individual, pursuant to a  
36 collective bargaining agreement or individual employment contract, is

1 employed full time in accordance with a definition of full time  
2 contained in the agreement or contract, and for which compensation for  
3 full time work is payable. This subsection may not be applied  
4 retroactively to an individual who had no guarantee of work at the  
5 start of such period and subsequently is provided additional work by  
6 the employer.

7 ~~((3) An officer of a corporation who owns ten percent or more of  
8 the outstanding stock of the corporation, or a corporate officer who is  
9 a family member of an officer who owns ten percent or more of the  
10 outstanding stock of the corporation, whose claim for benefits is based  
11 on any wages with that corporation, is:~~

12 ~~(a) Not "unemployed" in any week during the individual's term of  
13 office or ownership in the corporation, even if wages are not being  
14 paid;~~

15 ~~(b) "Unemployed" in any week upon dissolution of the corporation or  
16 if the officer permanently resigns or is permanently removed from their  
17 appointment and responsibilities with that corporation in accordance  
18 with its articles of incorporation or bylaws.~~

19 ~~As used in this section, "family member" means persons who are  
20 members of a family by blood or marriage as parents, stepparents,  
21 grandparents, spouses, children, brothers, sisters, stepchildren,  
22 adopted children, or grandchildren.))~~

23 **Sec. 4.** RCW 50.04.080 and 2007 c 146 s 19 are each amended to read  
24 as follows:

25 ~~((1))~~ "Employer" means any individual or type of organization,  
26 including any partnership, association, trust, estate, joint stock  
27 company, insurance company, limited liability company, or corporation,  
28 whether domestic or foreign, or the receiver, trustee in bankruptcy,  
29 trustee, or the legal representative of a deceased person, having any  
30 person in employment or, having become an employer, has not ceased to  
31 be an employer as provided in this title.

32 ~~((2) For the purposes of collection remedies available under  
33 chapter 50.24 RCW, "employer," in the case of a corporation or limited  
34 liability company, includes persons found personally liable for any  
35 unpaid contributions and interest and penalties on those contributions  
36 under RCW 50.24.230.~~

1       ~~(3) Except for corporations covered by chapters 50.44 and 50.50~~  
2 ~~RCW, "employer" does not include a corporation when all personal~~  
3 ~~services are performed only by bona fide corporate officers, unless the~~  
4 ~~corporation registers with the department as required in RCW 50.12.070~~  
5 ~~and elects to provide coverage for its corporate officers under RCW~~  
6 ~~50.24.160.))~~

7       **Sec. 5.** RCW 50.04.090 and 2007 c 146 s 20 are each amended to read  
8 as follows:

9       ~~((1))~~ "Employing unit" means any individual or any type of  
10 organization, including any partnership, association, trust, estate,  
11 joint stock company, insurance company, or corporation, whether  
12 domestic or foreign, or the receiver, trustee in bankruptcy, trustee or  
13 successor thereof, or the legal representative of a deceased person,  
14 which has or subsequent to January 1, 1937, had in its employ or in its  
15 "employment" one or more individuals performing services within this  
16 state. The state and its political subdivisions shall be deemed  
17 employing units as to any transactions occurring on or after September  
18 21, 1977, which would render an employing unit liable for  
19 contributions, interest, or penalties under RCW 50.24.130. "Employing  
20 unit" includes Indian tribes as defined in RCW 50.50.010.

21       ~~((2) Except for corporations covered by chapters 50.44 and 50.50~~  
22 ~~RCW, "employing unit" does not include a corporation when all personal~~  
23 ~~services are performed only by bona fide corporate officers, unless the~~  
24 ~~corporation registers with the department as required in RCW 50.12.070~~  
25 ~~and elects to provide coverage for its corporate officers under RCW~~  
26 ~~50.24.160.))~~

27       NEW SECTION. **Sec. 6.** RCW 50.24.230 (Corporate or limited  
28 liability company officers, members, and owners--Personal liability)  
29 and 2007 c 146 s 18 are each repealed.

30       NEW SECTION. **Sec. 7.** 2007 c 146 s 4 is repealed.

31       NEW SECTION. **Sec. 8.** If any part of this act is found to be in  
32 conflict with federal requirements that are a prescribed condition to  
33 the allocation of federal funds to the state or the eligibility of  
34 employers in this state for federal unemployment tax credits, the

1 conflicting part of this act is inoperative solely to the extent of the  
2 conflict, and the finding or determination does not affect the  
3 operation of the remainder of this act. Rules adopted under this act  
4 must meet federal requirements that are a necessary condition to the  
5 receipt of federal funds by the state or the granting of federal  
6 unemployment tax credits to employers in this state.

7 NEW SECTION. **Sec. 9.** If any provision of this act or its  
8 application to any person or circumstance is held invalid, the  
9 remainder of the act or the application of the provision to other  
10 persons or circumstances is not affected.

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