
SENATE BILL 6570

State of Washington

62nd Legislature

2012 Regular Session

By Senators Keiser, Kohl-Welles, Conway, Kline, and Benton

Read first time 02/01/12. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to family and medical leave; amending RCW
2 49.86.005, 49.86.010, 49.86.020, 49.86.030, 49.86.050, 49.86.060,
3 49.86.070, 49.86.080, 49.86.090, 49.86.100, 49.86.110, 49.86.120,
4 49.86.130, 49.86.140, 49.86.160, 49.86.170, 49.86.180, 43.79A.040,
5 49.86.210, 50.29.021, and 50.29.021; reenacting and amending RCW
6 34.05.328; adding new sections to chapter 49.86 RCW; adding a new
7 section to chapter 82.04 RCW; repealing RCW 49.86.040; providing an
8 effective date; and providing expiration dates.

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

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

12 The legislature finds that, although family and medical leave laws
13 have assisted individuals to balance the demands of the workplace with
14 their family responsibilities, more needs to be done to achieve the
15 goals of parent and child bonding, family care, children and family
16 health, workforce stability, and economic security. In particular, the
17 legislature finds that many individuals do not have access to family
18 and medical leave laws, and those who do may not be in a financial
19 position to take family and medical leave that is unpaid, and that

1 employer-paid benefits meet only a relatively small part of this need.
2 The legislature declares it to be in the public interest to establish
3 a program that: (1) Allows parents to bond with a newborn or newly
4 placed child, and workers to care for family members with a serious
5 health condition or to recover from their own serious health condition;
6 (2) provides limited and additional income support for a reasonable
7 period while an individual is away from work on family and medical
8 leave; (3) reduces the impact on state income support programs by
9 increasing an individual's ability to provide caregiving services for
10 ((a—child)) family members while maintaining an employment
11 relationship; and (4) establishes a wage replacement benefit to be
12 coordinated with current existing state and federal family and medical
13 leave laws.

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

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

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

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

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

34 ~~(4) "Department" means the state agency to be directed to~~
35 ~~administer the family leave insurance program.~~

36 ~~(5) "Director" means the director of the department.)~~ "Child,"

1 "health care provider," "parent," "serious health condition," and
2 "spouse" means the same as in RCW 49.78.020.

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

4 (5) "Department" means the employment security department.

5 (6) "Employer" means: (a) The same as in RCW 50.04.080; and (b)
6 the state and its political subdivisions.

7 (7) "Employment" has the meaning provided in RCW 50.04.100.

8 (8) "Family and medical leave" means ~~leave((:—(a) Because of the~~
9 ~~birth of a child of the employee and in order to care for the child; or~~
10 ~~(b) because of the placement of a child with the employee for~~
11 ~~adoption))~~ for a family member's serious health condition, leave for
12 the birth or placement of a child, and leave for the individual's
13 serious health condition as these types of leave are defined in RCW
14 49.78.020 and described in RCW 49.78.220.

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

17 (10) "Family member" means a child, spouse, domestic partner, or
18 parent of the individual.

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

22 ~~((+11))~~ (12) "Premium" or "premiums" means payments required by
23 this chapter to be made to the department for the family and medical
24 leave insurance account under RCW 49.86.170.

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

29 ~~((+12))~~ (14) "Regularly working" means the average number of hours
30 per workweek that an individual worked in the two quarters of the
31 individual's qualifying year in which total wages were highest.

32 **Sec. 3.** RCW 49.86.020 and 2007 c 357 s 4 are each amended to read
33 as follows:

34 (1) The department shall establish and administer a family and
35 medical leave insurance program and pay family and medical leave
36 insurance benefits as specified in this chapter.

1 (2) The department shall establish procedures and forms for filing
2 claims for benefits under this chapter. The department shall notify
3 the employer within five business days of a claim being filed under RCW
4 49.86.030.

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

6 (a) There has been a birth or placement of a child, or the
7 individual or the individual's family member has a serious health
8 condition, as applicable; and

9 (b) The individual is not earning waiting period credits or
10 receiving benefits under chapter 7.68 RCW, Title 50 or 51 RCW, or other
11 applicable federal or state crime victims' compensation, unemployment
12 compensation, industrial insurance, or disability insurance laws; and

13 (c) The individual's serious health condition is not a result of
14 the individual's perpetration of a gross misdemeanor or felony.

15 (4) The department may require that a claim for benefits under this
16 chapter be supported by a certification issued by the health care
17 provider providing health care to the individual or the individual's
18 family member, as applicable.

19 (5) The department shall use information sharing and integration
20 technology to facilitate the disclosure of relevant information or
21 records by (~~the employment security department~~) another state agency,
22 so long as an individual consents to the disclosure as required under
23 RCW 49.86.030(~~(+4)~~) (1)(d).

24 (~~(+4)~~) (6) Information contained in the files and records
25 pertaining to an individual under this chapter are confidential and not
26 open to public inspection, other than to public employees in the
27 performance of their official duties. However, the individual or an
28 authorized representative of an individual may review the records or
29 receive specific information from the records on the presentation of
30 the signed authorization of the individual. An employer or the
31 employer's duly authorized representative may review the records of an
32 individual employed by the employer in connection with a pending claim.
33 At the department's discretion, other persons may review records when
34 such persons are rendering assistance to the department at any stage of
35 the proceedings on any matter pertaining to the administration of this
36 chapter.

37 (~~(+5)~~) (7) The department shall develop and implement an outreach
38 program to ensure that individuals who may be eligible to receive

1 family and medical leave insurance benefits under this chapter are made
2 aware of these benefits. Outreach information shall explain, in an
3 easy to understand format, eligibility requirements, the claims
4 process, weekly benefit amounts, maximum benefits payable, notice and
5 medical certification requirements, reinstatement and nondiscrimination
6 rights, confidentiality, and ~~((coordination of leave))~~ the relationship
7 between employment protection, leave from employment, and wage
8 replacement benefits under this chapter and other laws, collective
9 bargaining agreements, and employer policies. Outreach information
10 shall be prepared by the department with technical assistance from the
11 department of labor and industries. Outreach information shall be
12 available in English and other primary languages as defined in RCW
13 74.04.025.

14 **Sec. 4.** RCW 49.86.030 and 2011 1st sp.s. c 25 s 1 are each amended
15 to read as follows:

16 ~~((Beginning October 1, 2015,))~~ (1) Family and medical leave
17 insurance benefits are payable to an individual during a period in
18 which the individual is unable to perform his or her regular or
19 customary work because he or she is on family and medical leave if the
20 individual:

21 ~~((1))~~ (a) Files a claim for benefits in the six-week period
22 beginning on the first day of the calendar week in which the individual
23 is on leave for the birth or placement of a child, or in each week in
24 which the individual is on ((family)) leave for a family member's
25 serious health condition, and as required by rules adopted by the
26 ~~((director))~~ commissioner;

27 ~~((2))~~ (b) Has been employed for at least six hundred eighty hours
28 ~~((in employment))~~ during the individual's qualifying year;

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

32 ~~((4))~~ (d) Consents to the disclosure of information or records
33 deemed private and confidential under ~~((chapter 50.13 RCW))~~ state law.
34 Initial disclosure of this information and these records by ~~((the~~
35 ~~employment security department))~~ another state agency to the department
36 is solely for purposes related to the administration of this chapter.

1 Further disclosure of this information or these records is subject to
2 RCW 49.86.020(~~(+3+)~~) (4) and section 14 of this act;

3 ~~((+5+)) (e)~~ Discloses whether or not he or she owes child support
4 obligations as defined in RCW 50.40.050; (~~and~~

5 ~~(6) Documents that he or she has provided~~) (f) Provides the
6 employer from whom family and medical leave is to be taken with written
7 notice of the individual's intention to take family and medical leave
8 in the same manner as an employee is required to provide notice in RCW
9 49.78.250 and, in the individual's claim for benefits, attests that
10 written notice has been provided; and

11 (g) Provides a document authorizing the family member's or
12 individual's health care provider, as applicable, to disclose the
13 family member's or individual's health care information in the form of
14 the certification of a serious health condition. To be valid, the
15 disclosure authorization must satisfy the requirements set forth in RCW
16 70.02.030.

17 (2)(a) With respect to leave for the birth or placement of a child,
18 family and medical leave insurance benefits are payable beginning as
19 soon as funds are available on or after October 1, 2014.

20 (b) With respect to leave for a family member's serious health
21 condition, family and medical leave insurance benefits are payable
22 beginning October 1, 2016.

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

25 With respect to leave for the individual's serious health
26 condition, an individual is disqualified from family and medical leave
27 insurance benefits beginning with the first day of the calendar week,
28 and continuing for the next fifty-two consecutive weeks, in which the
29 individual is suffering from a serious health condition resulting from
30 the individual's perpetration of a gross misdemeanor or felony.

31 Sec. 6. RCW 49.86.050 and 2007 c 357 s 7 are each amended to read
32 as follows:

33 (1) The maximum number of weeks during which family and medical
34 leave insurance benefits are payable in an application year is (~~five~~
35 ~~weeks~~) six weeks for the leave for the birth or placement of a child
36 and a family member's serious health condition and twenty-six weeks for

1 the individual's serious health condition. However, benefits are not
2 payable during a waiting period consisting of the first seven calendar
3 days of family and medical leave taken in an application year with
4 respect to a particular type of family and medical leave, whether the
5 first seven calendar days of family and medical leave are employer paid
6 or unpaid.

7 (2)(a) The first payment of benefits must be made to an individual
8 within two weeks after the completed claim is (~~filed~~) received or the
9 family and medical leave began, whichever is later, and subsequent
10 payments must be made (~~semimonthly~~) biweekly thereafter.

11 (b) The payment of benefits under this chapter shall not be
12 considered a binding determination of the obligations of the department
13 under this chapter. The acceptance of compensation by the individual
14 shall likewise not be considered a binding determination of his or her
15 rights under this chapter. Whenever any payment of benefits under this
16 chapter has been made and timely appeal therefrom has been made where
17 the final decision is that the payment was improper, the individual
18 shall repay it and recoupment may be made from any future payment due
19 to the individual on any claim under this chapter. The (~~director~~)
20 commissioner may exercise his or her discretion to waive, in whole or
21 in part, the amount of any such payments where the recovery would be
22 against equity and good conscience.

23 (c) If an individual dies before he or she receives a payment of
24 benefits, the payment shall be made by the department and distributed
25 consistent with the terms of the decedent's will or, if the decedent
26 dies intestate, consistent with the terms of RCW 11.04.015.

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

29 The amount of family and medical leave insurance benefits shall be
30 determined as follows:

31 (1) The weekly benefit shall be (~~two hundred fifty dollars per~~
32 ~~week for an individual who at the time of beginning family leave was~~
33 ~~regularly working thirty five hours or more per week~~) .55 times an
34 individual's weekly earnings.

35 (2) (~~If~~) For an individual who at the time of beginning family
36 and medical leave was regularly working thirty-five hours or more per
37 week and who is on family and medical leave (~~for less than thirty five~~

1 hours but at least eight hours in a week, the individual's weekly
2 benefit shall be .025 times the maximum weekly benefit times the number
3 of hours of family leave taken in the week. Benefits are not payable
4 for less than eight hours of family leave taken in a week.

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

12 ~~(4))~~ the weekly benefit shall be a minimum of two hundred fifty
13 dollars per week.

14 (3) In no case shall benefits be payable for less than eight hours
15 of family and medical leave taken in a week.

16 (4) If an individual discloses that he or she owes child support
17 obligations under RCW 49.86.030 and the department determines that the
18 individual is eligible for benefits, the department shall notify the
19 applicable state or local child support enforcement agency and deduct
20 and withhold an amount from benefits in a manner consistent with RCW
21 50.40.050.

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

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

30 ~~((1))~~ If the internal revenue service determines that family and
31 medical leave insurance benefits under this chapter are subject to
32 federal income tax, the department must advise an individual filing a
33 ~~((new))~~ claim for family and medical leave insurance benefits, at the
34 time of filing such claim, that(~~+~~

35 ~~(a))~~ the internal revenue service has determined that benefits are
36 subject to federal income tax(~~+~~

1 ~~(b)) and requirements exist pertaining to estimated tax~~
2 ~~payments((+~~

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

6 ~~(d) The individual is permitted to change a previously elected~~
7 ~~withholding status.~~

8 ~~(2) Amounts deducted and withheld from benefits must remain in the~~
9 ~~family leave insurance account until transferred to the federal taxing~~
10 ~~authority as a payment of income tax.~~

11 ~~(3) The director shall follow all procedures specified by the~~
12 ~~federal internal revenue service pertaining to the deducting and~~
13 ~~withholding of income tax)).~~

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

16 (1) If family and medical leave insurance benefits are paid
17 erroneously or as a result of willful misrepresentation, or if a claim
18 for family and medical leave benefits is rejected after benefits are
19 paid, RCW 51.32.240 shall apply, except that appeals are governed by
20 RCW 49.86.120, penalties are paid into the family and medical leave
21 insurance account, and the department shall seek repayment of benefits
22 from the recipient. The department shall issue an overpayment
23 assessment setting forth the reasons for, and the amount of, the
24 overpayment.

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

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

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

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

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

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

18 (2) The individual entitled to leave under this section shall be
19 restored to a position of employment in the same manner as an employee
20 entitled to leave under chapter 49.78 RCW is restored to a position of
21 employment, as specified in RCW 49.78.280.

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

23 (a) The employer from whom the individual takes family and medical
24 leave employs (~~more than~~) twenty-five or more employees for each
25 working day during each of twenty or more calendar workweeks in the
26 current or preceding calendar year within seventy-five miles of the
27 employee's worksite; and

28 (b) The individual has been employed for at least twelve months by
29 that employer, and for at least one thousand two hundred fifty hours of
30 service with that employer during the previous twelve-month period.

31 (4) This section shall be enforced by the department of labor and
32 industries as provided in chapter 49.78 RCW.

33 **Sec. 11.** RCW 49.86.100 and 2007 c 357 s 12 are each amended to
34 read as follows:

35 If spouses or (~~people involved in a legal relationship established~~
36 ~~under chapter 26.60 RCW who are~~) domestic partners entitled to leave

1 under this chapter are employed by the same employer, the employer may
2 require that spouses or (~~people involved in such a relationship~~
3 ~~governed by Title 26 RCW~~) domestic partners not take such leave
4 concurrently if such leave is taken: (1) For the birth or placement of
5 a child; or (2) for a parent's serious health condition.

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

8 (1) Beginning January 1, 2015, an employer of individuals not
9 covered by this chapter or a self-employed person, including a sole
10 proprietor, partner, or joint venturer, may elect coverage under this
11 chapter for all individuals in its employ for an initial period of not
12 less than three years or a subsequent period of not less than one year
13 immediately following another period of coverage. The employer or
14 self-employed person must file a notice of election in writing with the
15 (~~director~~) commissioner, as required by the department. The election
16 becomes effective on the date of filing the notice with the
17 commissioner.

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

28 (3) The department may cancel elective coverage if the employer or
29 self-employed person fails to make required payments or reports. The
30 department may collect due and unpaid premiums and may levy an
31 additional premium for the remainder of the period of coverage. The
32 cancellation shall be effective no later than thirty days from the date
33 of the notice in writing advising the employer or self-employed person
34 of the cancellation. Within five days of receiving written notice of
35 the cancellation from the commissioner, an employer must provide
36 written notice of the cancellation to all individuals in the employer's
37 employ.

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

6 NEW SECTION. Sec. 13. A new section is added to chapter 49.86 RCW
7 to read as follows:

8 (1) Beginning January 1, 2014, for each individual, each employer
9 shall pay a premium to the department based on the amount of wages
10 subject to tax under the federal social security wage base. Each
11 employer may deduct from the pay of each individual the full amount
12 that the employer is required to pay for the individual.

13 (2) Payments shall be made in the manner and at such intervals as
14 provided in this chapter and directed by the department, and shall be
15 deposited in the family and medical leave insurance account. In
16 developing and implementing the requirements of this section and
17 section 14 of this act, the department shall adopt government
18 efficiencies to improve administration and reduce costs. These
19 efficiencies shall include combined reporting and payment, with a
20 single return, of premiums under this section and contributions under
21 chapter 50.24 RCW. In the payment of premiums, a fractional part of a
22 cent shall be disregarded unless it amounts to one-half cent or more,
23 in which case it shall be increased to one cent.

24 (3) By September 1, 2014, and by each subsequent September 1st, the
25 commissioner shall adjust the amount of the premium to ensure that the
26 amount is the lowest rate necessary to pay family and medical leave
27 insurance benefits and administrative costs, and maintain actuarial
28 solvency in accordance with recognized insurance principles, of the
29 family and medical leave insurance program on a current basis, and to
30 repay loaned funds from the supplemental pension fund, if any, as
31 required in section 23 of this act. The adjusted amount of the premium
32 takes effect for the calendar year beginning after the relevant
33 September 1st.

34 NEW SECTION. Sec. 14. A new section is added to chapter 49.86 RCW
35 to read as follows:

36 (1) In the form and at the times specified in this chapter and by

1 the commissioner, an employer shall make reports, furnish information,
2 and make payments of premiums as required by section 13 of this act to
3 the department. In developing and implementing the requirements of
4 this section and section 13 of this act, the department shall adopt
5 government efficiencies to improve administration and reduce costs.
6 These efficiencies shall include combined reporting and payment, with
7 a single return, of premiums under this section and contributions under
8 chapter 50.24 RCW. If the employer is a temporary help company that
9 provides employees on a temporary basis to its customers, the temporary
10 help company is considered the employer for purposes of this section.
11 However, if the temporary help company fails to remit the required
12 premiums, the customer to whom the employees were provided is liable
13 for paying the premiums.

14 (2)(a) An employer must keep at his or her place of business a
15 record of employment from which the information needed by the
16 department for purposes of this chapter may be obtained. This record
17 shall at all times be open to the inspection of the commissioner or
18 department employees designated by the commissioner.

19 (b) Information obtained from employer records under this chapter
20 is confidential and not open to public inspection, other than to public
21 employees in the performance of their official duties. However, an
22 interested party shall be supplied with information from employer
23 records to the extent necessary for the proper presentation of the case
24 in question. An employer may authorize inspection of its records by
25 written consent.

26 (3) The requirements relating to the assessment and collection of
27 family and medical leave insurance premiums are the same as the
28 requirements relating to the assessment and collection of contributions
29 under Title 50 RCW, including but not limited to penalties, interest,
30 and department lien rights and collection remedies. These requirements
31 apply to:

32 (a) An employer that fails under this chapter to make the required
33 reports, or fails to remit the full amount of the premiums when due;

34 (b) An employer that willfully makes a false statement or
35 misrepresentation regarding a material fact, or willfully fails to
36 report a material fact, to avoid making the required reports or
37 remitting the full amount of the premiums when due under this chapter;

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

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

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

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

9 (1) Except as provided in section 16(1) of this act, a person
10 ~~((aggrieved by a decision of the department under this chapter must))~~
11 may file a notice of appeal ((with the director)) from any
12 determination or redetermination made by the department with the
13 commissioner, by mail or personally, within thirty days after the date
14 on which a copy of the department's decision was ~~((communicated to))~~
15 served on the person. Upon receipt of the notice of appeal, the
16 ~~((director))~~ commissioner shall request the assignment of an
17 administrative law judge in accordance with chapter 34.05 RCW to
18 conduct a hearing and issue a proposed decision and order. The hearing
19 shall be conducted in accordance with chapter 34.05 RCW.

20 (2) The administrative law judge's proposed decision and order
21 shall be final and not subject to further appeal unless, within thirty
22 days after the decision is ~~((communicated to))~~ served on the interested
23 parties, ~~((a party petitions for review by the director. If the~~
24 ~~director's review is timely requested, the director may order~~
25 ~~additional evidence by the administrative law judge. On the basis of~~
26 ~~the evidence before the administrative law judge and such additional~~
27 ~~evidence as the director may order to be taken, the director shall~~
28 ~~render a decision affirming, modifying, or setting aside the~~
29 ~~administrative law judge's decision. The director's decision becomes~~
30 ~~final and not subject to further appeal unless, within thirty days~~
31 ~~after the decision is communicated to the interested parties,))~~ a party
32 files a petition for judicial review as provided in chapter 34.05 RCW.
33 ~~((The director is a party to any judicial action involving the~~
34 ~~director's decision and shall be represented in the action by the~~
35 ~~attorney general.))~~

36 (3) If, upon ~~((administrative or))~~ judicial review, the final
37 decision of the applicable department is reversed or modified, ~~((the~~

1 ~~administrative law judge or~~) the court in its discretion may award
2 reasonable attorneys' fees and costs to the prevailing party.
3 Attorneys' fees and costs owed by the department, if any, are payable
4 from the family and medical leave insurance account.

5 NEW SECTION. **Sec. 16.** A new section is added to chapter 49.86 RCW
6 to read as follows:

7 (1) A determination of amount of benefits potentially payable
8 issued under this chapter shall not serve as a basis for appeal under
9 RCW 49.86.120. However, the determination shall be subject to request
10 by the individual on family and medical leave for redetermination by
11 the commissioner at any time within one year from the date of delivery
12 or mailing of such determination, or any redetermination thereof. A
13 redetermination shall be furnished to the individual in writing and
14 provide the basis for appeal under RCW 49.86.120.

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

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

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

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

3 (1) An employer, temporary help company, employment agency,
4 employee organization, or other person may not discharge, expel, or
5 otherwise discriminate against ((a person)) an individual because he or
6 she has filed or communicated to the employer an intent to file a
7 claim, a complaint, or an appeal, or has testified or is about to
8 testify or has assisted in any proceeding, under this chapter, at any
9 time, including during the waiting period described in RCW 49.86.050
10 and the period in which the ((person)) individual receives family and
11 medical leave insurance benefits under this chapter. ((This section
12 shall be enforced as provided in RCW 51.48.025.))

13 (2) Any individual who believes that he or she has been discharged
14 or otherwise discriminated against by an employer in violation of this
15 section may file a complaint with the commissioner alleging
16 discrimination within ninety days of the date of the alleged violation.
17 Upon receipt of such complaint, the commissioner shall cause an
18 investigation to be made as the commissioner deems appropriate. Within
19 ninety days of the receipt of a complaint filed under this section, the
20 commissioner shall notify the complainant of his or her determination.
21 If, upon such investigation, it is determined that this section has
22 been violated, the commissioner shall bring an action in the superior
23 court of the county in which the violation is alleged to have occurred.

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

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

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

33 (1)((a) Leave taken under this chapter must be taken concurrently
34 with any leave taken)) If an individual is entitled to employment
35 protection under this chapter and under the federal family and medical
36 leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) ((or

1 ~~under~~)), chapter 49.78 RCW, or other applicable federal, state, or
2 local law, the individual is entitled to employment protection under
3 the other applicable law most favorable to the individual.

4 ~~((b) An))~~ (2) Except as provided in this subsection, if an
5 individual is entitled to family and medical leave under this chapter
6 and under the federal family and medical leave act, chapter 49.78 RCW,
7 or other applicable federal, state, or local law, the employer may
8 require that leave (~~taken~~) under this chapter be taken concurrently
9 (~~or otherwise coordinated~~) with leave (~~allowed~~) under (~~the terms~~
10 of a collective bargaining agreement or employer policy, as applicable,
11 for the birth or placement of a child)) other applicable laws. The
12 employer must give individuals in its employ written notice of this
13 requirement. An individual may not increase the duration of his or her
14 entitlement to leave from employment by tacking on leave under this
15 chapter to leave under other applicable laws. Leave from employment
16 under this chapter is in addition to leave from employment during which
17 benefits are paid or are payable under Title 51 RCW or other applicable
18 federal or state industrial insurance laws.

19 (3) In any week in which an individual is earning waiting period
20 credits or receiving benefits under chapter 7.68 RCW, Title 50 or 51
21 RCW, or other applicable federal or state crime victims' compensation,
22 unemployment compensation, industrial insurance, or disability
23 insurance laws, the individual is disqualified from receiving family
24 and medical leave insurance benefits under this chapter.

25 (4)(a) Except as provided in this section, this chapter does not
26 prohibit an employer from negotiating a collective bargaining agreement
27 or adopting employer policies, as applicable, to coordinate existing
28 benefits with leave from employment and wage replacement benefits
29 required under this chapter.

30 ~~((2)(a))~~ (b) This chapter does not diminish an employer's
31 obligation to comply with a collective bargaining agreement or employer
32 policy, as applicable, that provides greater employment protection,
33 leave (~~for the birth or placement of a child~~) from employment, or
34 wage replacement benefits than under this chapter.

35 ~~((b))~~ (c) An individual's (~~right to leave~~) rights to employment
36 protection, leave from employment, and wage replacement benefits under
37 this chapter may not be diminished by a collective bargaining agreement
38 entered into or renewed or an employer policy adopted or retained after

1 ((July 1, 2008)) the effective date of this section. Any agreement by
2 an individual to waive his or her rights under this chapter is void as
3 against public policy.

4 (d) If an employer provides wage replacement benefits to an
5 individual while on family and medical leave through disability
6 insurance or any other means, the individual may elect whether first to
7 receive such benefits or receive family and medical leave insurance
8 benefits under this chapter. An individual may not be required to
9 receive the individual's wage replacement benefits, if any, before
10 receiving family and medical leave insurance benefits under this
11 chapter.

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

14 The ((director)) commissioner may adopt rules as necessary to
15 implement this chapter. In adopting rules, the ((director))
16 commissioner shall maintain consistency with the rules adopted to
17 implement the federal family and medical leave act, and chapter 49.78
18 RCW, to the extent such rules are not in conflict with this chapter.
19 The provisions of RCW 34.05.328 do not apply to rules adopted by the
20 commissioner to implement RCW 49.86.060(1) or section 13(3) of this
21 act.

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

24 The family and medical leave insurance account is created in the
25 custody of the state treasurer. All receipts from the premiums imposed
26 under this act must be deposited in the account. Expenditures from the
27 account may be used only for the purposes of the family and medical
28 leave insurance program. Only the ((director of the department of
29 labor and industries)) commissioner or the ((director's))
30 commissioner's designee may authorize expenditures from the account.
31 The account is subject to the allotment procedures under chapter 43.88
32 RCW. An appropriation is required for administrative expenses, but not
33 for benefit payments. ((During the 2007-2009 fiscal biennium, the
34 legislature may transfer from the family leave insurance account to the
35 state general fund such amounts as reflect the excess fund balance of
36 the account.))

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

3 Whenever, in the judgment of the state investment board, there
4 shall be in the family and medical leave insurance account funds in
5 excess of that amount deemed by the state investment board to be
6 sufficient to meet the current expenditures properly payable therefrom,
7 the state investment board shall have full power to invest, reinvest,
8 manage, contract, or sell or exchange investments acquired with such
9 excess funds in the manner prescribed by RCW 43.84.150, and not
10 otherwise.

11 **Sec. 22.** RCW 43.79A.040 and 2011 1st sp.s. c 37 s 603 are each
12 amended to read as follows:

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

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

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

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

32 (b) The following accounts and funds must receive their
33 proportionate share of earnings based upon each account's or fund's
34 average daily balance for the period: The Washington promise
35 scholarship account, the college savings program account, the
36 Washington advanced college tuition payment program account, the
37 accessible communities account, the community and technical college

1 innovation account, the agricultural local fund, the American Indian
2 scholarship endowment fund, the foster care scholarship endowment fund,
3 the foster care endowed scholarship trust fund, the students with
4 dependents grant account, the basic health plan self-insurance reserve
5 account, the contract harvesting revolving account, the Washington
6 state combined fund drive account, the commemorative works account, the
7 county enhanced 911 excise tax account, the Washington international
8 exchange scholarship endowment fund, the toll collection account, the
9 developmental disabilities endowment trust fund, the energy account,
10 the fair fund, the family and medical leave insurance account, the food
11 animal veterinarian conditional scholarship account, the fruit and
12 vegetable inspection account, the future teachers conditional
13 scholarship account, the game farm alternative account, the GET ready
14 for math and science scholarship account, the Washington global health
15 technologies and product development account, the grain inspection
16 revolving fund, the industrial insurance rainy day fund, the juvenile
17 accountability incentive account, the law enforcement officers' and
18 firefighters' plan 2 expense fund, the local tourism promotion account,
19 the pilotage account, the produce railcar pool account, the regional
20 transportation investment district account, the rural rehabilitation
21 account, the stadium and exhibition center account, the youth athletic
22 facility account, the self-insurance revolving fund, the sulfur dioxide
23 abatement account, the children's trust fund, the Washington horse
24 racing commission Washington bred owners' bonus fund and breeder awards
25 account, the Washington horse racing commission class C purse fund
26 account, the individual development account program account, the
27 Washington horse racing commission operating account (earnings from the
28 Washington horse racing commission operating account must be credited
29 to the Washington horse racing commission class C purse fund account),
30 the life sciences discovery fund, the Washington state heritage center
31 account, the reduced cigarette ignition propensity account, and the
32 reading achievement account.

33 (c) The following accounts and funds must receive eighty percent of
34 their proportionate share of earnings based upon each account's or
35 fund's average daily balance for the period: The advanced right-of-way
36 revolving fund, the advanced environmental mitigation revolving
37 account, the federal narcotics asset forfeitures account, the high

1 occupancy vehicle account, the local rail service assistance account,
2 and the miscellaneous transportation programs account.

3 (d) Any state agency that has independent authority over accounts
4 or funds not statutorily required to be held in the custody of the
5 state treasurer that deposits funds into a fund or account in the
6 custody of the state treasurer pursuant to an agreement with the office
7 of the state treasurer shall receive its proportionate share of
8 earnings based upon each account's or fund's average daily balance for
9 the period.

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

13 NEW SECTION. **Sec. 23.** A new section is added to chapter 49.86 RCW
14 to read as follows:

15 If necessary to ensure that money is available in the family and
16 medical leave insurance account for the initial administration of the
17 family and medical leave insurance program, the director of labor and
18 industries may, from time to time before July 1, 2014, lend funds from
19 the supplemental pension fund to the family and medical leave insurance
20 account. These loaned funds may be expended solely for the initial
21 administration of the program under this chapter. The commissioner
22 shall repay the supplemental pension fund, plus its proportionate share
23 of earnings from investment of moneys in the supplemental pension fund
24 during the loan period, from the family and medical leave insurance
25 account within three years of the date of the loan. This section
26 expires October 1, 2016.

27 **Sec. 24.** RCW 49.86.210 and 2011 1st sp.s. c 25 s 2 are each
28 amended to read as follows:

29 Beginning ((~~September 1, 2016~~)) December 1, 2014, the department
30 shall report to the legislature by ((~~September~~)) December 1st of each
31 year on projected and actual program participation, premium rates, fund
32 balances, benefits paid, information on program participants, costs of
33 providing benefits, and outreach efforts.

34 **Sec. 25.** RCW 50.29.021 and 2011 c 4 s 3 are each amended to read
35 as follows:

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

4 (2)(a) An experience rating account shall be established and
5 maintained for each employer, except employers as described in RCW
6 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
7 payments in lieu of contributions, taxable local government employers
8 as described in RCW 50.44.035, and those employers who are required to
9 make payments in lieu of contributions, based on existing records of
10 the employment security department.

11 (b) Benefits paid to an eligible individual shall be charged to the
12 experience rating accounts of each of such individual's employers
13 during the individual's base year in the same ratio that the wages paid
14 by each employer to the individual during the base year bear to the
15 wages paid by all employers to that individual during that base year,
16 except as otherwise provided in this section.

17 (c) When the eligible individual's separating employer is a covered
18 contribution paying base year employer, benefits paid to the eligible
19 individual shall be charged to the experience rating account of only
20 the individual's separating employer if the individual qualifies for
21 benefits under:

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

25 (ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through
26 (x).

27 (3) The legislature finds that certain benefit payments, in whole
28 or in part, should not be charged to the experience rating accounts of
29 employers except those employers described in RCW 50.44.010, 50.44.030,
30 and 50.50.030 who have properly elected to make payments in lieu of
31 contributions, taxable local government employers described in RCW
32 50.44.035, and those employers who are required to make payments in
33 lieu of contributions, as follows:

34 (a) Benefits paid to any individual later determined to be
35 ineligible shall not be charged to the experience rating account of any
36 contribution paying employer. However, when a benefit claim becomes
37 invalid due to an amendment or adjustment of a report where the
38 employer failed to report or inaccurately reported hours worked or

1 remuneration paid, or both, all benefits paid will be charged to the
2 experience rating account of the contribution paying employer or
3 employers that originally filed the incomplete or inaccurate report or
4 reports. An employer who reimburses the trust fund for benefits paid
5 to workers and who fails to report or inaccurately reported hours
6 worked or remuneration paid, or both, shall reimburse the trust fund
7 for all benefits paid that are based on the originally filed incomplete
8 or inaccurate report or reports.

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

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

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

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

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

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

29 (f) With respect to claims with an effective date on or after the
30 first Sunday following April 22, 2005, benefits paid that exceed the
31 benefits that would have been paid if the weekly benefit amount for the
32 claim had been determined as one percent of the total wages paid in the
33 individual's base year shall not be charged to the experience rating
34 account of any contribution paying employer. This subsection (3)(f)
35 does not apply to the calculation of contribution rates under RCW
36 50.29.025 for rate year 2010 and thereafter.

37 (g) The forty-five dollar increase paid as part of an individual's
38 weekly benefit amount as provided in RCW 50.20.1201 and the twenty-five

1 dollar increase paid as part of an individual's weekly benefit amount
2 as provided in RCW 50.20.1202 shall not be charged to the experience
3 rating account of any contribution paying employer.

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

10 (i) Training benefits paid to an individual under RCW 50.22.155
11 shall not be charged to the experience rating account of any
12 contribution paying employer.

13 (4)(a) A contribution paying base year employer, not otherwise
14 eligible for relief of charges for benefits under this section, may
15 receive such relief if the benefit charges result from payment to an
16 individual who:

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

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

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

26 (iv) Continues to be employed on a regularly scheduled permanent
27 part-time basis by a base year employer and who at some time during the
28 base year was concurrently employed and subsequently separated from at
29 least one other base year employer. Benefit charge relief ceases when
30 the employment relationship between the employer requesting relief and
31 the claimant is terminated. This subsection does not apply to shared
32 work employers under chapter (~~50.06-50.60~~) 50.60 RCW; (~~or~~)

33 (v) Was hired to replace an employee who is a member of the
34 military reserves or National Guard and was called to federal active
35 military service by the president of the United States and is
36 subsequently laid off when that employee is reemployed by their
37 employer upon release from active duty within the time provided for
38 reemployment in RCW 73.16.035; or

1 (vi) Worked for an employer for six weeks or less, and was laid off
2 at the end of temporary employment when that individual temporarily
3 replaced a permanent employee receiving family and medical leave
4 insurance benefits under chapter 49.86 RCW, and the layoff is due to
5 the return of that permanent employee. This subsection applies to
6 claims with an effective date on or after July 4, 2015.

7 (b) The employer requesting relief of charges under this subsection
8 must request relief in writing within thirty days following mailing to
9 the last known address of the notification of the valid initial
10 determination of such claim, stating the date and reason for the
11 separation or the circumstances of continued employment. The
12 commissioner, upon investigation of the request, shall determine
13 whether relief should be granted.

14 **Sec. 26.** RCW 50.29.021 and 2011 c 4 s 14 are each amended to read
15 as follows:

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

19 (2)(a) An experience rating account shall be established and
20 maintained for each employer, except employers as described in RCW
21 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
22 payments in lieu of contributions, taxable local government employers
23 as described in RCW 50.44.035, and those employers who are required to
24 make payments in lieu of contributions, based on existing records of
25 the employment security department.

26 (b) Benefits paid to an eligible individual shall be charged to the
27 experience rating accounts of each of such individual's employers
28 during the individual's base year in the same ratio that the wages paid
29 by each employer to the individual during the base year bear to the
30 wages paid by all employers to that individual during that base year,
31 except as otherwise provided in this section.

32 (c) When the eligible individual's separating employer is a covered
33 contribution paying base year employer, benefits paid to the eligible
34 individual shall be charged to the experience rating account of only
35 the individual's separating employer if the individual qualifies for
36 benefits under:

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

4 (ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through
5 (x).

6 (3) The legislature finds that certain benefit payments, in whole
7 or in part, should not be charged to the experience rating accounts of
8 employers except those employers described in RCW 50.44.010, 50.44.030,
9 and 50.50.030 who have properly elected to make payments in lieu of
10 contributions, taxable local government employers described in RCW
11 50.44.035, and those employers who are required to make payments in
12 lieu of contributions, as follows:

13 (a) Benefits paid to any individual later determined to be
14 ineligible shall not be charged to the experience rating account of any
15 contribution paying employer. However, when a benefit claim becomes
16 invalid due to an amendment or adjustment of a report where the
17 employer failed to report or inaccurately reported hours worked or
18 remuneration paid, or both, all benefits paid will be charged to the
19 experience rating account of the contribution paying employer or
20 employers that originally filed the incomplete or inaccurate report or
21 reports. An employer who reimburses the trust fund for benefits paid
22 to workers and who fails to report or inaccurately reported hours
23 worked or remuneration paid, or both, shall reimburse the trust fund
24 for all benefits paid that are based on the originally filed incomplete
25 or inaccurate report or reports.

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

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

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

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

37 (d) In the case of individuals who requalify for benefits under RCW
38 50.20.050 or 50.20.060, benefits based on wage credits earned prior to

1 the disqualifying separation shall not be charged to the experience
2 rating account of the contribution paying employer from whom that
3 separation took place.

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

8 (f) With respect to claims with an effective date on or after the
9 first Sunday following April 22, 2005, benefits paid that exceed the
10 benefits that would have been paid if the weekly benefit amount for the
11 claim had been determined as one percent of the total wages paid in the
12 individual's base year shall not be charged to the experience rating
13 account of any contribution paying employer. This subsection (3)(f)
14 does not apply to the calculation of contribution rates under RCW
15 50.29.025 for rate year 2010 and thereafter.

16 (g) The forty-five dollar increase paid as part of an individual's
17 weekly benefit amount as provided in RCW 50.20.1201 and the twenty-five
18 dollar increase paid as part of an individual's weekly benefit amount
19 as provided in RCW 50.20.1202 shall not be charged to the experience
20 rating account of any contribution paying employer.

21 (h) With respect to claims where the minimum amount payable weekly
22 is increased to one hundred fifty-five dollars pursuant to RCW
23 50.20.1201(3), benefits paid that exceed the benefits that would have
24 been paid if the minimum amount payable weekly had been calculated
25 pursuant to RCW 50.20.120 shall not be charged to the experience rating
26 account of any contribution paying employer.

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

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

35 (4)(a) A contribution paying base year employer, not otherwise
36 eligible for relief of charges for benefits under this section, may
37 receive such relief if the benefit charges result from payment to an
38 individual who:

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

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

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

10 (iv) Continues to be employed on a regularly scheduled permanent
11 part-time basis by a base year employer and who at some time during the
12 base year was concurrently employed and subsequently separated from at
13 least one other base year employer. Benefit charge relief ceases when
14 the employment relationship between the employer requesting relief and
15 the claimant is terminated. This subsection does not apply to shared
16 work employers under chapter (~~(50.06-50.60)~~) 50.60 RCW; (~~(or)~~)

17 (v) Was hired to replace an employee who is a member of the
18 military reserves or National Guard and was called to federal active
19 military service by the president of the United States and is
20 subsequently laid off when that employee is reemployed by their
21 employer upon release from active duty within the time provided for
22 reemployment in RCW 73.16.035; or

23 (vi) Worked for an employer for six weeks or less, and was laid off
24 at the end of temporary employment when that individual temporarily
25 replaced a permanent employee receiving family and medical leave
26 insurance benefits under chapter 49.86 RCW, and the layoff is due to
27 the return of that permanent employee. This subsection applies to
28 claims with an effective date on or after July 4, 2015.

29 (b) The employer requesting relief of charges under this subsection
30 must request relief in writing within thirty days following mailing to
31 the last known address of the notification of the valid initial
32 determination of such claim, stating the date and reason for the
33 separation or the circumstances of continued employment. The
34 commissioner, upon investigation of the request, shall determine
35 whether relief should be granted.

36 NEW SECTION. Sec. 27. A new section is added to chapter 82.04 RCW
37 to read as follows:

1 In computing the tax imposed under this chapter, a credit is
2 allowed for an employer that hires a replacement worker to replace an
3 employee who has taken family and medical leave under chapter 49.86
4 RCW. The credit is equal to one thousand two hundred dollars for each
5 replacement worker hired on or after July 1, 2015. To qualify for the
6 credit, fewer than fifty employees must be employed by the employer at
7 the time the replacement worker is hired. The credit may not exceed
8 the tax otherwise due under this chapter for the tax reporting period.
9 Unused credit may not be carried over to be credited against taxes
10 incurred in subsequent tax reporting periods. No refunds may be
11 granted for credits under this section.

12 **Sec. 28.** RCW 34.05.328 and 2011 c 298 s 21 and 2011 c 149 s 1 are
13 each reenacted and amended to read as follows:

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

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

18 (b) Determine that the rule is needed to achieve the general goals
19 and specific objectives stated under (a) of this subsection, and
20 analyze alternatives to rule making and the consequences of not
21 adopting the rule;

22 (c) Provide notification in the notice of proposed rule making
23 under RCW 34.05.320 that a preliminary cost-benefit analysis is
24 available. The preliminary cost-benefit analysis must fulfill the
25 requirements of the cost-benefit analysis under (d) of this subsection.
26 If the agency files a supplemental notice under RCW 34.05.340, the
27 supplemental notice must include notification that a revised
28 preliminary cost-benefit analysis is available. A final cost-benefit
29 analysis must be available when the rule is adopted under RCW
30 34.05.360;

31 (d) Determine that the probable benefits of the rule are greater
32 than its probable costs, taking into account both the qualitative and
33 quantitative benefits and costs and the specific directives of the
34 statute being implemented;

35 (e) Determine, after considering alternative versions of the rule
36 and the analysis required under (b), (c), and (d) of this subsection,

1 that the rule being adopted is the least burdensome alternative for
2 those required to comply with it that will achieve the general goals
3 and specific objectives stated under (a) of this subsection;

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

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

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

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

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

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

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

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

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

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

32 (c) Promote and assist voluntary compliance; and

33 (d) Evaluate whether the rule achieves the purpose for which it was
34 adopted, including, to the maximum extent practicable, the use of
35 interim milestones to assess progress and the use of objectively
36 measurable outcomes.

37 (4) After adopting a rule described in subsection (5) of this

1 section regulating the same activity or subject matter as another
2 provision of federal or state law, an agency must do all of the
3 following:

4 (a) Coordinate implementation and enforcement of the rule with the
5 other federal and state entities regulating the same activity or
6 subject matter by making every effort to do one or more of the
7 following:

8 (i) Deferring to the other entity;

9 (ii) Designating a lead agency; or

10 (iii) Entering into an agreement with the other entities specifying
11 how the agency and entities will coordinate implementation and
12 enforcement.

13 If the agency is unable to comply with this subsection (4)(a), the
14 agency must report to the legislature pursuant to (b) of this
15 subsection;

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

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

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

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

25 (i) Significant legislative rules of the departments of ecology,
26 labor and industries, health, revenue, social and health services, and
27 natural resources, the employment security department, the forest
28 practices board, the office of the insurance commissioner, and to the
29 legislative rules of the department of fish and wildlife implementing
30 chapter 77.55 RCW; and

31 (ii) Any rule of any agency, if this section is voluntarily made
32 applicable to the rule by the agency, or is made applicable to the rule
33 by a majority vote of the joint administrative rules review committee
34 within forty-five days of receiving the notice of proposed rule making
35 under RCW 34.05.320.

36 (b) This section does not apply to:

37 (i) Emergency rules adopted under RCW 34.05.350;

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

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

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

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

16 (vi) Rules that set or adjust fees under the authority of RCW
17 19.02.075 or that set or adjust fees or rates pursuant to legislative
18 standards, including fees set or adjusted under the authority of RCW
19 19.80.045;

20 (vii) Rules of the department of social and health services
21 relating only to client medical or financial eligibility and rules
22 concerning liability for care of dependents; (~~(e)~~)

23 (viii) Rules of the department of revenue that adopt a uniform
24 expiration date for reseller permits as authorized in RCW 82.32.780 and
25 82.32.783; or

26 (ix) Rules adopted by the commissioner of the employment security
27 department to implement RCW 49.86.060(1) or section 13(3) of this act.

28 (c) For purposes of this subsection:

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

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

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

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

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

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

22 (b) The costs incurred by state agencies in complying with this
23 section;

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

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

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

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

33 NEW SECTION. **Sec. 29.** RCW 49.86.040 (Disqualification from
34 benefits) and 2007 c 357 s 6 are each repealed.

35 NEW SECTION. **Sec. 30.** If any provision of this act or its

1 application to any person or circumstance is held invalid, the
2 remainder of the act or the application of the provision to other
3 persons or circumstances is not affected.

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

6 This chapter may be known and cited as the family security act.

7 NEW SECTION. **Sec. 32.** Section 25 of this act expires July 1,
8 2012.

9 NEW SECTION. **Sec. 33.** Section 26 of this act takes effect July 1,
10 2012.

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