S-3630.3

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**SENATE BILL 5873**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Keiser, Billig, Conway, Das, Dhingra, King, Kuderer, Liias, Lovick, Mullet, Nguyen, Nobles, Randall, Robinson, Rolfes, Stanford, and C. Wilson

AN ACT Relating to unemployment insurance, family leave, and medical leave premiums; amending RCW 50.29.025, 50.29.070, and 50A.10.030; and declaring an emergency.

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

**Sec.**  RCW 50.29.025 and 2021 c 2 s 17 are each amended to read as follows:

(1) The contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

|  |  |  |  |
| --- | --- | --- | --- |
| Benefit Ratio | | Rate  Class | Rate  (percent) |
| At least | Less than |
|  | 0.000001 | 1 | 0.00 |
| 0.000001 | 0.001250 | 2 | 0.11 |
| 0.001250 | 0.002500 | 3 | 0.22 |
| 0.002500 | 0.003750 | 4 | 0.33 |
| 0.003750 | 0.005000 | 5 | 0.43 |
| 0.005000 | 0.006250 | 6 | 0.54 |
| 0.006250 | 0.007500 | 7 | 0.65 |
| 0.007500 | 0.008750 | 8 | 0.76 |
| 0.008750 | 0.010000 | 9 | 0.88 |
| 0.010000 | 0.011250 | 10 | 1.01 |
| 0.011250 | 0.012500 | 11 | 1.14 |
| 0.012500 | 0.013750 | 12 | 1.28 |
| 0.013750 | 0.015000 | 13 | 1.41 |
| 0.015000 | 0.016250 | 14 | 1.54 |
| 0.016250 | 0.017500 | 15 | 1.67 |
| 0.017500 | 0.018750 | 16 | 1.80 |
| 0.018750 | 0.020000 | 17 | 1.94 |
| 0.020000 | 0.021250 | 18 | 2.07 |
| 0.021250 | 0.022500 | 19 | 2.20 |
| 0.022500 | 0.023750 | 20 | 2.38 |
| 0.023750 | 0.025000 | 21 | 2.50 |
| 0.025000 | 0.026250 | 22 | 2.63 |
| 0.026250 | 0.027500 | 23 | 2.75 |
| 0.027500 | 0.028750 | 24 | 2.88 |
| 0.028750 | 0.030000 | 25 | 3.00 |
| 0.030000 | 0.031250 | 26 | 3.13 |
| 0.031250 | 0.032500 | 27 | 3.25 |
| 0.032500 | 0.033750 | 28 | 3.38 |
| 0.033750 | 0.035000 | 29 | 3.50 |
| 0.035000 | 0.036250 | 30 | 3.63 |
| 0.036250 | 0.037500 | 31 | 3.75 |
| 0.037500 | 0.040000 | 32 | 4.00 |
| 0.040000 | 0.042500 | 33 | 4.25 |
| 0.042500 | 0.045000 | 34 | 4.50 |
| 0.045000 | 0.047500 | 35 | 4.75 |
| 0.047500 | 0.050000 | 36 | 5.00 |
| 0.050000 | 0.052500 | 37 | 5.15 |
| 0.052500 | 0.055000 | 38 | 5.25 |
| 0.055000 | 0.057500 | 39 | 5.30 |
| 0.057500 |  | 40 | 5.40 |

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B) and (C) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B)(I) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten months and dividing the result by the total taxable payroll. However, the calculation under this subsection (1)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than four-tenths lower than the calculation under (b)(i)(A) of this subsection for that rate year. For rate year 2011 and thereafter, the calculation may not result in a flat social cost factor that is more than one and twenty-two one-hundredths percent except for rate year 2021 the calculation may not result in a flat social cost factor that is more than five-tenths percent, for rate year 2022 the calculation may not result in a flat social cost factor that is more than ((~~seventy-five one-hundredths~~)) five-tenths percent, for rate year 2023 the calculation may not result in a flat social cost factor that is more than ((~~eight-tenths~~)) seven-tenths percent, for rate year 2024 the calculation may not result in a flat social cost factor that is more than eighty-five one-hundredths percent, and for rate year 2025 the calculation may not result in a flat social cost factor that is more than nine-tenths percent.

(II) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide ten months of unemployment benefits or less, the flat social cost factor for the rate year immediately following the cut-off date may not increase by more than fifty percent over the previous rate year or may not exceed one and twenty-two one-hundredths percent, whichever is greater.

(III) For the purposes of this subsection (1)(b), the commissioner shall determine the number of months of unemployment benefits in the unemployment compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this subsection (1)(b) shall be six-tenths of one percent, except that if the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide:

(I) At least ten months but less than eleven months of unemployment benefits, the minimum shall be five-tenths of one percent; or

(II) At least eleven months but less than twelve months of unemployment benefits, the minimum shall be forty-five hundredths of one percent; or

(III) At least twelve months but less than thirteen months of unemployment benefits, the minimum shall be four-tenths of one percent; or

(IV) At least thirteen months but less than fifteen months of unemployment benefits, the minimum shall be thirty-five hundredths of one percent; or

(V) At least fifteen months but less than seventeen months of unemployment benefits, the minimum shall be twenty-five hundredths of one percent; or

(VI) At least seventeen months but less than eighteen months of unemployment benefits, the minimum shall be fifteen hundredths of one percent; or

(VII) At least eighteen months of unemployment benefits, the minimum shall be fifteen hundredths of one percent through rate year 2011 and shall be zero thereafter.

(ii) The graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six percent or, for employers whose North American industry classification system code is within "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," may not exceed five and four-tenths percent:

(A) Rate class 1 - 40 percent;

(B) Rate class 2 - 44 percent;

(C) Rate class 3 - 48 percent;

(D) Rate class 4 - 52 percent;

(E) Rate class 5 - 56 percent;

(F) Rate class 6 - 60 percent;

(G) Rate class 7 - 64 percent;

(H) Rate class 8 - 68 percent;

(I) Rate class 9 - 72 percent;

(J) Rate class 10 - 76 percent;

(K) Rate class 11 - 80 percent;

(L) Rate class 12 - 84 percent;

(M) Rate class 13 - 88 percent;

(N) Rate class 14 - 92 percent;

(O) Rate class 15 - 96 percent;

(P) Rate class 16 - 100 percent;

(Q) Rate class 17 - 104 percent;

(R) Rate class 18 - 108 percent;

(S) Rate class 19 - 112 percent;

(T) Rate class 20 - 116 percent; and

(U) Rate classes 21 through 40 - 120 percent.

(iii) For rate year 2023, for any employer with 10 or fewer employees as reported on the employer's fourth quarter report to the department for 2021 and whose rate class is greater than rate class 7, the employer's rate class, only for purposes of the rate classes in (b)(ii)(A) through (U) of this subsection (1), is rate class 7.

(iv) For the purposes of this section:

(A) "Total social cost" means the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) For employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due:

(i)(A) For an employer who does not enter into an approved agency-deferred payment contract as described in (c)(i)(B) or (C) of this subsection, the array calculation factor rate shall be the rate it would have been if the employer had not been delinquent in payment plus an additional one percent or, if the employer is delinquent in payment for a second or more consecutive year, an additional two percent;

(B) For an employer who enters an approved agency-deferred payment contract by September 30th of the previous rate year, the array calculation factor rate shall be the rate it would have been if the employer had not been delinquent in payment;

(C) For an employer who enters an approved agency-deferred payment contract after September 30th of the previous rate year, but within thirty days of the date the department sent its first tax rate notice, the array calculation factor rate shall be the rate it would have been had the employer not been delinquent in payment plus an additional one-half of one percent or, if the employer is delinquent in payment for a second or more consecutive year, an additional one and one-half percent;

(D) For an employer who enters an approved agency-deferred payment contract as described in (c)(i)(B) or (C) of this subsection, but who fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the array calculation factor rate shall immediately revert to the applicable array calculation factor rate under (c)(i)(A) of this subsection; and

(ii) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii)((~~(A)~~)) of this subsection.

(d) For all other employers not qualified to be in the array:

(i) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, multiplied by the history factor, but not less than one percent or more than the array calculation factor rate in rate class 40;

(ii) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, multiplied by the history factor, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection; and

(iii) The history factor shall be based on the total amounts of benefits charged and contributions paid in the three fiscal years ending prior to the computation date by employers not qualified to be in the array, other than employers in (c) of this subsection, who were first subject to contributions in the calendar year ending three years prior to the computation date. The commissioner shall calculate the history ratio by dividing the total amount of benefits charged by the total amount of contributions paid in this three-year period by these employers. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five one‑hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The commissioner shall determine the history factor according to the history ratio as follows:

|  | History  Ratio |  | History  Factor  (percent) |
| --- | --- | --- | --- |
|  | At least | Less than |  |
| (A) |  | .95 | 90 |
| (B) | .95 | 1.05 | 100 |
| (C) | 1.05 |  | 115 |

(2) Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with established classification practices found in the North American industry classification system code.

**Sec.**  RCW 50.29.070 and 2003 2nd sp.s. c 4 s 19 are each amended to read as follows:

(1) Within a reasonable time after the computation date each employer shall be notified of the employer's rate of contribution as determined for the succeeding rate year and factors used in the calculation. Beginning with rate year 2005, the notice must include the amount of the contribution rate that is attributable to each component of the rate under RCW 50.29.025((~~(2)~~)) (1).

(2) Any employer dissatisfied with the benefit charges made to the employer's account for the twelve-month period immediately preceding the computation date or with his or her determined rate may file a request for review and redetermination with the commissioner within thirty days of the mailing of the notice to the employer, showing the reason for such request. Should such request for review and redetermination be denied, the employer may, within thirty days of the mailing of such notice of denial, file with the appeal tribunal a petition for hearing which shall be heard in the same manner as a petition for denial of refund. The appellate procedure prescribed by this title for further appeal shall apply to all denials of review and redetermination under this section.

**Sec.**  RCW 50A.10.030 and 2019 c 13 s 21 are each amended to read as follows:

(1)(a) ((~~Beginning January 1, 2019, the~~)) The department shall assess for each individual in employment with an employer and for each individual electing coverage a premium based on the amount of the individual's wages subject to subsection (4) of this section.

(b) The premium rate for family leave benefits shall be equal to one-third of the total premium rate.

(c) The premium rate for medical leave benefits shall be equal to two-thirds of the total premium rate.

(2) For calendar year 2022 and thereafter, the commissioner shall determine the percentage of paid claims related to family leave benefits and the percentage of paid claims related to medical leave benefits and adjust the premium rates set in subsection (1)(b) and (c) of this section by the proportional share of paid claims.

(3)(a) ((~~Beginning January 1, 2019, and ending December 31, 2020, the total premium rate shall be four-tenths of one percent of the individual's wages subject to subsection (4) of this section.~~

~~(b)~~)) For family leave premiums, an employer may deduct from the wages of each employee up to the full amount of the premium required.

((~~(c)~~)) (b) For medical leave premiums, an employer may deduct from the wages of each employee up to forty-five percent of the full amount of the premium required.

((~~(d)~~)) (c) An employer may elect to pay all or any portion of the employee's share of the premium for family leave or medical leave benefits, or both.

(4) The commissioner must annually set a maximum limit on the amount of wages that is subject to a premium assessment under this section that is equal to the maximum wages subject to taxation for social security as determined by the social security administration.

(5)(a) Employers with fewer than fifty employees employed in the state are not required to pay the employer portion of premiums for family and medical leave.

(b) If an employer with fewer than fifty employees elects to pay the premiums, the employer is then eligible for assistance under RCW 50A.24.010.

(6) For calendar year 2021 and thereafter, the total premium rate shall be based on the family and medical leave insurance account balance ratio as of September 30th of the previous year. The commissioner shall calculate the account balance ratio by dividing the balance of the family and medical leave insurance account by total covered wages paid by employers and those electing coverage. The division shall be carried to the fourth decimal place with the remaining fraction disregarded unless it amounts to five hundred-thousandths or more, in which case the fourth decimal place shall be rounded to the next higher digit. If the account balance ratio is:

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

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

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

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

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

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

(7) For calendar year 2022:

(a) The total premium rate shall be six-tenths of one percent of the individual's wages subject to subsection (4) of this section;

(b) The employer portion of the total premium is 26.78 percent;

(c) Thirty-one percent of the total premium shall be paid with general fund state, subject to appropriation to the department; and

(d)(i) If funds are appropriated to the department as provided in (c) of this subsection, 42.22 percent of the total premium shall be deducted from the wages of each employee and paid in by the employer; and

(ii) If funds are not appropriated as provided in (c) of this subsection, 73.22 percent of the total premium shall be deducted from the wages of each employee and paid in by the employer.

(8) Beginning January 1, 2021, if the account balance ratio calculated in subsection (6) of this section is below five hundredths of one percent, the commissioner must assess a solvency surcharge at the lowest rate necessary to provide revenue to pay for the administrative and benefit costs of family and medical leave, for the calendar year, as determined by the commissioner. The solvency surcharge shall be at least one-tenth of one percent and no more than six-tenths of one percent and be added to the total premium rate for family and medical leave benefits.

((~~(8)~~)) (9)(a) The employer must collect from the employees the premiums and any surcharges provided under this section through payroll deductions and remit the amounts collected to the department.

(b) In collecting employee premiums through payroll deductions, the employer shall act as the agent of the employees and shall remit the amounts to the department as required by this title.

(c) On September 30th of each year, the department shall average the number of employees reported by an employer over the last four completed calendar quarters to determine the size of the employer for the next calendar year for the purposes of this section and RCW 50A.24.010.

((~~(9)~~)) (10) Premiums shall be collected in the manner and at such intervals as provided in this title and directed by the department.

((~~(10)~~)) (11) Premiums collected under this section are placed in trust for the employees and employers that the program is intended to assist.

((~~(11)~~)) (12) A city, code city, town, county, or political subdivision may not enact a charter, ordinance, regulation, rule, or resolution:

(a) Creating a paid family or medical leave insurance program that alters or amends the requirements of this title for any private employer;

(b) Providing for local enforcement of the provisions of this title; or

(c) Requiring private employers to supplement duration of leave or amount of wage replacement benefits provided under this title.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**