

2SSB 5649 - H COMM AMD

By Committee on Labor & Workplace Standards

NOT ADOPTED 03/03/2022

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 50A.05.010 and 2021 c 232 s 2 are each amended to
4 read as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this title.

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

8 (i) Is performed infrequently and irregularly; and

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

11 (b) For purposes of casual labor:

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

14 (ii) "Irregularly" means work performed not on a consistent
15 cadence.

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

20 (3) "Commissioner" means the commissioner of the department or
21 the commissioner's designee.

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

23 (5) (a) "Employee" means an individual who is in the employment of
24 an employer.

25 (b) "Employee" does not include employees of the United States of
26 America.

27 (6) "Employee's average weekly wage" means the quotient derived
28 by dividing the employee's total wages during the two quarters of the
29 employee's qualifying period in which total wages were highest by
30 twenty-six. If the result is not a multiple of one dollar, the
31 department must round the result to the next lower multiple of one
32 dollar.

1 (7) (a) "Employer" means: (i) Any individual or type of
2 organization, including any partnership, association, trust, estate,
3 joint stock company, insurance company, limited liability company, or
4 corporation, whether domestic or foreign, or the receiver, trustee in
5 bankruptcy, trustee, or the legal representative of a deceased
6 person, having any person in employment or, having become an
7 employer, has not ceased to be an employer as provided in this title;
8 (ii) the state, state institutions, and state agencies; and (iii) any
9 unit of local government including, but not limited to, a county,
10 city, town, municipal corporation, quasi-municipal corporation, or
11 political subdivision.

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

13 (8) (a) "Employment" means personal service, of whatever nature,
14 unlimited by the relationship of master and servant as known to the
15 common law or any other legal relationship performed for wages or
16 under any contract calling for the performance of personal services,
17 written or oral, express or implied. The term "employment" includes
18 an individual's entire service performed within or without or both
19 within and without this state, if:

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

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

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

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

30 (b) "Employment" does not include:

31 (i) Self-employed individuals;

32 (ii) Casual labor;

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

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

38 (II) Such service is either outside the usual course of business
39 for which such service is performed, or that such service is

1 performed outside of all the places of business of the enterprises
2 for which such service is performed; and

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

6 (B) As a separate alternative:

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

10 (II) Such service is either outside the usual course of business
11 for which such service is performed, or that such service is
12 performed outside of all the places of business of the enterprises
13 for which such service is performed, or the individual is
14 responsible, both under the contract and in fact, for the costs of
15 the principal place of business from which the service is performed;
16 and

17 (III) Such individual is customarily engaged in an independently
18 established trade, occupation, profession, or business, of the same
19 nature as that involved in the contract of service, or such
20 individual has a principal place of business for the work the
21 individual is conducting that is eligible for a business deduction
22 for federal income tax purposes; and

23 (IV) On the effective date of the contract of service, such
24 individual is responsible for filing at the next applicable filing
25 period, both under the contract of service and in fact, a schedule of
26 expenses with the internal revenue service for the type of business
27 the individual is conducting; and

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

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

1 (iv) Services that require registration under chapter 18.27 RCW
2 or licensing under chapter 19.28 RCW rendered by an individual when:

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

6 (B) The service is either outside the usual course of business
7 for which the service is performed, or the service is performed
8 outside of all the places of business of the enterprise for which the
9 service is performed, or the individual is responsible, both under
10 the contract and in fact, for the costs of the principal place of
11 business from which the service is performed;

12 (C) The individual is customarily engaged in an independently
13 established trade, occupation, profession, or business, of the same
14 nature as that involved in the contract of service, or the individual
15 has a principal place of business for the business the individual is
16 conducting that is eligible for a business deduction for federal
17 income tax purposes, other than that furnished by the employer for
18 which the business has contracted to furnish services;

19 (D) On the effective date of the contract of service, the
20 individual is responsible for filing at the next applicable filing
21 period, both under the contract of service and in fact, a schedule of
22 expenses with the internal revenue service for the type of business
23 the individual is conducting;

24 (E) On the effective date of the contract of service, or within a
25 reasonable period after the effective date of the contract, the
26 individual has an active and valid certificate of registration with
27 the department of revenue, and an active and valid account with any
28 other state agencies as required by the particular case, for the
29 business the individual is conducting for the payment of all state
30 taxes normally paid by employers and businesses and has registered
31 for and received a unified business identifier number from the state
32 of Washington;

33 (F) On the effective date of the contract of service, the
34 individual is maintaining a separate set of books or records that
35 reflect all items of income and expenses of the business that the
36 individual is conducting; and

37 (G) On the effective date of the contract of service, the
38 individual has a valid contractor registration pursuant to chapter
39 18.27 RCW or an electrical contractor license pursuant to chapter
40 19.28 RCW.

1 (9) "Employment benefits" means all benefits provided or made
2 available to employees by an employer, including group life
3 insurance, health insurance, disability insurance, sick leave, annual
4 leave, educational benefits, and pensions.

5 (10) "Family leave" means any leave taken by an employee from
6 work:

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

10 (b) To bond with the employee's child during the first twelve
11 months after the child's birth, or the first twelve months after the
12 placement of a child under the age of eighteen with the employee;
13 (~~or~~)

14 (c) Because of any qualifying exigency as permitted under the
15 federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(E)
16 and 29 C.F.R. Sec. 825.126(b)(1) through (9), as they existed on
17 October 19, 2017, for family members as defined in subsection (11) of
18 this section; or

19 (d) During the seven calendar days following the death of the
20 family member for whom the employee:

21 (i) Would have qualified for medical leave under subsection (15)
22 of this section for the birth of their child; or

23 (ii) Would have qualified for family leave under (b) of this
24 subsection.

25 (11) "Family member" means a child, grandchild, grandparent,
26 parent, sibling, or spouse of an employee, and also includes any
27 individual who regularly resides in the employee's home or where the
28 relationship creates an expectation that the employee care for the
29 person, and that individual depends on the employee for care. "Family
30 member" includes any individual who regularly resides in the
31 employee's home, except that it does not include an individual who
32 simply resides in the same home with no expectation that the employee
33 care for the individual.

34 (12) "Grandchild" means a child of the employee's child.

35 (13) "Grandparent" means a parent of the employee's parent.

36 (14) "Health care provider" means: (a) A person licensed as a
37 physician under chapter 18.71 RCW or an osteopathic physician and
38 surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced
39 registered nurse practitioner under chapter 18.79 RCW; or (c) any

1 other person determined by the commissioner to be capable of
2 providing health care services.

3 (15) "Medical leave" means any leave taken by an employee from
4 work made necessary by the employee's own serious health condition.

5 (16) "Paid time off" includes vacation leave, personal leave,
6 medical leave, sick leave, compensatory leave, or any other paid
7 leave offered by an employer under the employer's established policy.

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

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

17 (19) "Postnatal" means the first six weeks after birth.

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

21 ~~((20))~~ (21) "Qualifying period" means the first four of the
22 last five completed calendar quarters or, if eligibility is not
23 established, the last four completed calendar quarters immediately
24 preceding the application for leave.

25 ~~((21))~~ (22) (a) "Remuneration" means all compensation paid for
26 personal services including commissions and bonuses and the cash
27 value of all compensation paid in any medium other than cash.

28 (b) Previously accrued compensation, other than severance pay or
29 payments received pursuant to plant closure agreements, when assigned
30 to a specific period of time by virtue of a collective bargaining
31 agreement, individual employment contract, customary trade practice,
32 or request of the individual compensated, is considered remuneration
33 for the period to which it is assigned. Assignment clearly occurs
34 when the compensation serves to make the individual eligible for all
35 regular fringe benefits for the period to which the compensation is
36 assigned.

37 (c) Remuneration also includes settlements or other proceeds
38 received by an individual as a result of a negotiated settlement for
39 termination of an individual written employment contract prior to its
40 expiration date. The proceeds are deemed assigned in the same

1 intervals and in the same amount for each interval as compensation
2 was allocated under the contract.

3 (d) Remuneration does not include:

4 (i) The payment of tips;

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

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

12 (~~((22))~~) (23)(a) "Serious health condition" means an illness,
13 injury, impairment, or physical or mental condition that involves:

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

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

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

22 (I) Treatment two or more times, within thirty days of the first
23 day of incapacity, unless extenuating circumstances exist, by a
24 health care provider, by a nurse or physician's assistant under
25 direct supervision of a health care provider, or by a provider of
26 health care services, such as a physical therapist, under orders of,
27 or on referral by, a health care provider; or

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

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

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

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

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

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

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

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

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

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

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

33 (e) Treatment for purposes of (a) of this subsection includes,
34 but is not limited to, examinations to determine if a serious health
35 condition exists and evaluations of the condition. Treatment does not
36 include routine physical examinations, eye examinations, or dental
37 examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of
38 continuing treatment includes, but is not limited to, a course of
39 prescription medication, such as an antibiotic, or therapy requiring
40 special equipment to resolve or alleviate the health condition, such

1 as oxygen. A regimen of continuing treatment that includes taking
2 over-the-counter medications, such as aspirin, antihistamines, or
3 salves, or bed rest, drinking fluids, exercise, and other similar
4 activities that can be initiated without a visit to a health care
5 provider, is not, by itself, sufficient to constitute a regimen of
6 continuing treatment for purposes of this title.

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

20 (g)(i) Substance abuse may be a serious health condition if the
21 conditions of this section are met. However, leave may only be taken
22 for treatment for substance abuse by a health care provider or by a
23 licensed substance abuse treatment provider. Absence because of the
24 employee's use of the substance, rather than for treatment, does not
25 qualify for leave under this title.

26 (ii) Treatment for substance abuse does not prevent an employer
27 from taking employment action against an employee. The employer may
28 not take action against the employee because the employee has
29 exercised his or her right to take medical leave for treatment.
30 However, if the employer has an established policy, applied in a
31 nondiscriminatory manner that has been communicated to all employees,
32 that provides under certain circumstances an employee may be
33 terminated for substance abuse, pursuant to that policy the employee
34 may be terminated whether or not the employee is presently taking
35 medical leave. An employee may also take family leave to care for a
36 covered family member who is receiving treatment for substance abuse.
37 The employer may not take action against an employee who is providing
38 care for a covered family member receiving treatment for substance
39 abuse.

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

11 ~~((23))~~ (24) "Service is localized in this state" has the same
12 meaning as described in RCW 50.04.120.

13 ~~((24))~~ (25) "Spouse" means a husband or wife, as the case may
14 be, or state registered domestic partner.

15 ~~((25))~~ (26) "State average weekly wage" means the most recent
16 average weekly wage calculated under RCW 50.04.355 and available on
17 January 1st of each year.

18 ~~((26))~~ (27) "Supplemental benefit payments" means payments made
19 by an employer to an employee as salary continuation or as paid time
20 off. Such payments must be in addition to any paid family or medical
21 leave benefits the employee is receiving.

22 ~~((27))~~ (28) "Typical workweek hours" means:

23 (a) For an hourly employee, the average number of hours worked
24 per week by an employee within the qualifying period; and

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

27 ~~((28))~~ (29) "Wage" or "wages" means:

28 (a) For the purpose of premium assessment, the remuneration paid
29 by an employer to an employee. The maximum wages subject to a premium
30 assessment are those wages as set by the commissioner under RCW
31 50A.10.030;

32 (b) For the purpose of payment of benefits, the remuneration paid
33 by one or more employers to an employee for employment during the
34 employee's qualifying period. At the request of an employee, wages
35 may be calculated on the basis of remuneration payable. The
36 department shall notify each employee that wages are calculated on
37 the basis of remuneration paid, but at the employee's request a
38 redetermination may be performed and based on remuneration payable;
39 and

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

3 **Sec. 2.** RCW 50A.05.090 and 2019 c 13 s 37 are each amended to
4 read as follows:

5 (1) Nothing in this title requires any party to a collective
6 bargaining agreement in existence on October 19, 2017, to reopen
7 negotiations of the agreement or to apply any of the rights and
8 responsibilities under this title unless and until the existing
9 agreement is reopened or renegotiated by the parties or expires.

10 (2) This section expires December 31, 2023.

11 **Sec. 3.** RCW 50A.15.020 and 2020 c 125 s 4 are each amended to
12 read as follows:

13 (1) Beginning January 1, 2020, family and medical leave are
14 available and benefits are payable to a qualified employee under this
15 section.

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

26 (b) Benefits may continue during the continuance of the need for
27 family or medical leave, subject to the maximum and minimum weekly
28 benefits, duration, and other conditions and limitations established
29 in this title.

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

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

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

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

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

6 (b) The maximum duration of paid medical leave may not exceed
7 twelve times the typical workweek hours during a period of fifty-two
8 consecutive calendar weeks. This leave may be extended an additional
9 two times the typical workweek hours if the employee experiences a
10 serious health condition with a pregnancy that results in incapacity.

11 (c) An employee is not entitled to paid family and medical leave
12 benefits under this title that exceeds a combined total of sixteen
13 times the typical workweek hours. The combined total of family and
14 medical leave may be extended to eighteen times the typical workweek
15 hours if the employee experiences a serious health condition with a
16 pregnancy that results in incapacity.

17 (4) (a) Any paid leave benefits under this chapter used in the
18 postnatal period by an employee eligible for benefits under RCW
19 50A.05.010(23) (a) (ii) (B) must be medical leave, subject to the
20 maximum and minimum weekly benefits, duration, and other conditions
21 and limitations established in this title, unless the employee
22 chooses to use family leave during the postnatal period.

23 (b) Certification of a serious health condition is not required
24 for paid leave benefits used in the postnatal period by an employee
25 eligible for benefits under RCW 50A.05.010(23) (a) (ii) (B).

26 (5) The weekly benefit for family and medical leave shall be
27 determined as follows: If the employee's average weekly wage is: (a)
28 Equal to or less than one-half of the state average weekly wage, then
29 the benefit amount is equal to ninety percent of the employee's
30 average weekly wage; or (b) greater than one-half of the state
31 average weekly wage, then the benefit amount is the sum of: (i)
32 Ninety percent of one-half of the state average weekly wage; and (ii)
33 fifty percent of the difference of the employee's average weekly wage
34 and one-half of the state average weekly wage.

35 ~~((+5))~~ (6) (a) The maximum weekly benefit for family and medical
36 leave that occurs on or after January 1, 2020, shall be one thousand
37 dollars. By September 30, 2020, and by each subsequent September
38 30th, the commissioner shall adjust the maximum weekly benefit amount
39 to ninety percent of the state average weekly wage. The adjusted

1 maximum weekly benefit amount takes effect on the following January
2 1st.

3 (b) The minimum weekly benefit shall not be less than one hundred
4 dollars per week except that if the employee's average weekly wage at
5 the time of family or medical leave is less than one hundred dollars
6 per week, the weekly benefit shall be the employee's full wage.

7 **Sec. 4.** RCW 50A.25.020 and 2019 c 13 s 71 are each amended to
8 read as follows:

9 (1) Any information or records concerning an individual or
10 employer obtained by the department pursuant to the administration of
11 this title shall be private and confidential, except as otherwise
12 provided in this chapter or RCW 50A.05.040.

13 (2) This chapter does not create a rule of evidence.

14 (3) The department must publish, on its website, a current list
15 of all employers that have approved voluntary plans under chapter
16 50A.30 RCW.

17 NEW SECTION. **Sec. 5.** A new section is added to chapter 50A.05
18 RCW to read as follows:

19 (1) The office of actuarial services is established within the
20 department.

21 (2) The head of the office must be qualified by education and
22 experience in the field of actuarial science.

23 **Sec. 6.** RCW 50A.15.040 and 2019 c 13 s 6 are each amended to
24 read as follows:

25 (1) Family and medical leave insurance benefits are payable to an
26 employee during a period in which the employee is unable to perform
27 his or her regular or customary work because he or she is on family
28 and medical leave if the employee:

29 (a) Files an application for benefits as required by rules
30 adopted by the commissioner;

31 (b) Has met the eligibility requirements of RCW 50A.15.010 or the
32 elective coverage requirements under RCW 50A.10.010;

33 (c) Consents to the disclosure of information or records deemed
34 private and confidential under state law. Initial disclosure of this
35 information and these records by another state agency to the
36 department is solely for purposes related to the administration of
37 this title. Further disclosure of this information or these records

1 is subject to chapter 50A.25 RCW(~~(7)~~) and RCW 50A.05.020(3)(~~(7)~~) and
2 (~~RCW~~) 50A.20.030;

3 (d) Provides his or her social security number;

4 (e) Provides a document authorizing the family member's or
5 employee's health care provider, as applicable, to disclose the
6 family member's or employee's health care information in the form of
7 the certification of a serious health condition;

8 (f) Provides the employer from whom family and medical leave is
9 to be taken with written notice of the employee's intention to take
10 family leave in the same manner as an employee is required to provide
11 notice in RCW 50A.15.030 and, in the employee's initial application
12 for benefits, attests that written notice has been provided, unless
13 notice has been waived by the employer under RCW 50A.15.030(3); and

14 (g) Provides documentation of a military exigency, if requested
15 by the employer.

16 (2) An employee who is not in employment for an employer at the
17 time of filing an application for benefits is exempt from subsection
18 (1)(f) and (g) of this section.

19 (3) Beginning July 1, 2022, and until the 12 months after the end
20 of the state of emergency declared by the governor due to COVID-19,
21 the department must ask the employee applicant whether their family
22 or medical leave is related to the COVID-19 pandemic. Initial
23 disclosure of this information is solely for purposes related to the
24 administration of this title, including monitoring potential impacts
25 on the solvency and stability of the family and medical leave
26 insurance account created in RCW 50A.05.070. Further disclosure of
27 this information or these records is subject to chapter 50A.25 RCW
28 and RCW 50A.05.020(3) and 50A.20.030.

29 **Sec. 7.** RCW 50A.05.050 and 2017 3rd sp.s. c 5 s 86 are each
30 amended to read as follows:

31 (1) Beginning December 1, 2020, and annually thereafter, the
32 department shall report to the legislature on the entire program,
33 including:

34 (~~(1)~~) (a) Projected and actual program participation;

35 (~~(2)~~) (b) Premium rates;

36 (~~(3)~~) (c) Fund balances;

37 (~~(4)~~) (d) Benefits paid;

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

4 ~~((6))~~ (f) Costs of providing benefits;

5 ~~((7))~~ (g) Elective coverage participation;

6 ~~((8))~~ (h) Voluntary plan participation;

7 ~~((9))~~ (i) Outreach efforts; and

8 ~~((10))~~ (j) Small business assistance.

9 (2) (a) Beginning January 1, 2023, the office of actuarial
10 services created in section 5 of this act must annually report, by
11 November 1st, to the advisory committee in RCW 50A.05.030 on the
12 experience and financial condition of the family and medical leave
13 insurance account, and the lowest future premium rates necessary to
14 maintain solvency of the family and medical leave insurance account
15 in the next four years while limiting fluctuation in premium rates.

16 (b) For calendar years 2023 through 2028, the annual reports in
17 (a) of this subsection must be submitted to the appropriate
18 committees of the legislature in compliance with RCW 43.01.036.

19 (3) Beginning October 1, 2023, the department must report
20 quarterly to the advisory committee in RCW 50A.05.030 on premium
21 collections, benefit payments, the family and medical leave insurance
22 account balance, and other program expenditures.

23 NEW SECTION. Sec. 8. A new section is added to chapter 50A.05
24 RCW to read as follows:

25 (1) The office of financial management must enter into a contract
26 with a public or private entity for actuarial services to provide a
27 report to the appropriate committees of the legislature by October 1,
28 2022, on the following:

29 (a) The experience and financial condition of the family and
30 medical leave insurance account created in RCW 50A.05.070;

31 (b) Any recommendations for options to modify the provisions of
32 chapter 50A.10 RCW to maintain the long-term stability and solvency
33 of the family and medical leave insurance account; and

34 (c) A comparison of the provisions of RCW 50A.10.030 with similar
35 provisions in those states with both paid medical leave insurance and
36 paid family leave insurance programs.

37 (2) The contract is exempt from the competitive procurement
38 requirements in chapter 39.26 RCW.

39 (3) The report in this section must comply with RCW 43.01.036.

1 (4) This section expires December 31, 2023.

2 **Sec. 9.** RCW 44.44.040 and 2019 c 363 s 22 are each amended to
3 read as follows:

4 The office of the state actuary shall have the following powers
5 and duties:

6 (1) Perform all actuarial services for the department of
7 retirement systems, including all studies required by law.

8 (2) Advise the legislature and the governor regarding pension
9 benefit provisions, and funding policies and investment policies of
10 the state investment board.

11 (3) Consult with the legislature and the governor concerning
12 determination of actuarial assumptions used by the department of
13 retirement systems.

14 (4) Prepare a report, to be known as the actuarial fiscal note,
15 on each pension bill introduced in the legislature which briefly
16 explains the financial impact of the bill. The actuarial fiscal note
17 shall include: (a) The statutorily required contribution for the
18 biennium and the following twenty-five years; (b) the biennial cost
19 of the increased benefits if these exceed the required contribution;
20 and (c) any change in the present value of the unfunded accrued
21 benefits. An actuarial fiscal note shall also be prepared for all
22 amendments which are offered in committee or on the floor of the
23 house of representatives or the senate to any pension bill. However,
24 a majority of the members present may suspend the requirement for an
25 actuarial fiscal note for amendments offered on the floor of the
26 house of representatives or the senate.

27 (5) Provide such actuarial services to the legislature as may be
28 requested from time to time.

29 (6) Provide staff and assistance to the committee established
30 under RCW 41.04.276.

31 (7) Provide actuarial assistance to the law enforcement officers'
32 and firefighters' plan 2 retirement board as provided in chapter 2,
33 Laws of 2003. Reimbursement for services shall be made to the state
34 actuary under RCW 39.34.130 and section 5(5), chapter 2, Laws of
35 2003.

36 (8) Provide actuarial assistance to the committee on advanced
37 tuition payment pursuant to chapter 28B.95 RCW, including
38 recommending a tuition unit price to the committee on advanced
39 tuition payment to be used in the ensuing enrollment period.

1 Reimbursement for services shall be made to the state actuary under
2 RCW 39.34.130.

3 (9) Provide actuarial assistance to the long-term services and
4 supports trust commission pursuant to chapter 50B.04 RCW.
5 Reimbursement for services shall be made to the state actuary under
6 RCW 39.34.130.

7 (10) Provide actuarial assistance, as requested by the employment
8 security department or the office of financial management, to the
9 employment security department related to the family and medical
10 leave program in Title 50A RCW.

11 **Sec. 10.** RCW 50A.25.070 and 2020 c 125 s 8 are each amended to
12 read as follows:

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

19 (a) An application in writing to the department for the records
20 or information containing a statement of the official purposes for
21 which the state or local government agency needs the information or
22 records and specifically identify the records or information sought
23 from the department; and

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

28 (2) The department may disclose information or records deemed
29 confidential under this chapter to the following state or local
30 government agencies:

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

33 (b) To the department of revenue to determine potential tax
34 liability or employer compliance with registration and licensing
35 requirements;

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

1 (d) To the office of financial management for the purpose of
2 conducting periodic salary or fringe benefit studies pursuant to law
3 or for the actuarial services created under this act;

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

7 (f) To the office of the attorney general for purposes of legal
8 representation;

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

11 (h) To the office of administrative hearings for the purpose of
12 administering the administrative appeal process;

13 (i) To the department of enterprise services for the purpose of
14 agency administration and operations; (~~and~~)

15 (j) To the consolidated technology services agency for the
16 purpose of enterprise technology support;

17 (k) To the office of the state actuary for the purpose of
18 performing actuarial services to assess the financial stability and
19 solvency of the family and medical leave program, and specifically
20 the family and medical leave insurance account created in RCW
21 50A.05.070; and

22 (l) To the joint legislative audit and review committee, in
23 accordance with RCW 44.28.110, for the purpose of conducting
24 performance audits.

25 NEW SECTION. Sec. 11. (1)(a) A legislative task force on paid
26 family and medical leave insurance premiums is established, with
27 members as provided in this subsection.

28 (i) The president of the senate must appoint two members from
29 each of the two largest caucuses of the senate.

30 (ii) The speaker of the house of representatives must appoint two
31 members from each of the two largest caucuses of the house of
32 representatives.

33 (iii) The voting members of the advisory committee in RCW
34 50A.05.030.

35 (iv) The governor shall appoint two members, one representing the
36 governor's office and one representing the employment security
37 department.

1 (b) The task force must choose its cochairs from among its
2 legislative membership described in (a)(i) and (ii) of this
3 subsection.

4 (2) The task force must review the reports submitted under RCW
5 50A.05.050 and make recommendations for any legislative modifications
6 to the provisions of chapter 50A.10 RCW to ensure the lowest future
7 premium rates necessary to maintain solvency of the family and
8 medical leave insurance account created in RCW 50A.05.070 in the next
9 four years while limiting fluctuation in family and medical leave
10 insurance premium rates.

11 (3)(a) Staff support for the task force must be provided by the
12 senate committee services and the house of representatives office of
13 program research.

14 (b) The staff must convene the initial meeting of the task force
15 no later than November 4, 2022.

16 (4) Legislative members of the task force are reimbursed for
17 travel expenses in accordance with RCW 44.04.120. Nonlegislative
18 members are not entitled to be reimbursed for travel expenses if they
19 are elected officials or are participating on behalf of an employer,
20 governmental entity, or other organization. Any reimbursement for
21 other nonlegislative members is subject to chapter 43.03 RCW.

22 (5) The expenses of the committee must be paid jointly by the
23 senate and the house of representatives. Task force expenditures are
24 subject to approval by the senate facilities and operations committee
25 and the house of representatives executive rules committee, or their
26 successor committees.

27 (6) The task force shall issue a final report on its findings and
28 recommendations to the governor and the appropriate committees of the
29 legislature by December 30, 2022.

30 (7) This section expires January 4, 2023.

31 NEW SECTION. **Sec. 12.** (1) By October 1, 2024, the joint
32 legislative audit and review committee, in consultation with the
33 employment security department and the advisory committee in RCW
34 50A.05.030, must conduct a performance audit analyzing the
35 implementation of the paid family and medical leave insurance
36 program. The analysis must include, at a minimum, the following
37 components:

1 (a) Evaluate the extent to which the department makes fair and
2 timely decisions, and communicates with employers and workers in a
3 timely, responsive, and accurate manner;

4 (b) Determine if current organization and service delivery models
5 are the most efficient available;

6 (c) Determine whether current initiatives improve service
7 delivery, meet the needs of current and future workers, and are
8 measurable;

9 (d) Evaluate whether the department prepares financial
10 information for the account under RCW 50A.05.070 in accordance with
11 generally accepted accounting principles;

12 (e) Evaluate the solvency of the account under RCW 50A.05.070
13 taking into account insurance risks and standard accounting
14 principles; and

15 (f) Make recommendations regarding administrative changes that
16 should be made to improve efficiency while maintaining quality
17 service to help address system costs and identify any needed
18 legislative changes to implement these recommendations.

19 (2) The joint legislative audit and review committee may contract
20 with an outside consulting firm with expertise in insurance or social
21 insurance and insurance principles.

22 (3) The joint legislative audit and review committee must submit
23 a final report on their findings to the appropriate committees of the
24 legislature by October 1, 2024, and must submit a progress report by
25 October 1, 2023.

26 (4) This section expires December 31, 2025.

27 NEW SECTION. **Sec. 13.** Section 8 of this act is necessary for
28 the immediate preservation of the public peace, health, or safety, or
29 support of the state government and its existing public institutions,
30 and takes effect immediately."

31 Correct the title.

EFFECT: Allows data sharing from the Employment Security
Department to:

(1) The Office of Financial Management, for the purpose of the
actuarial services required by the bill; and

(2) The Joint Legislative Audit and Review Committee, for the purpose of conducting performance audits.

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