
HOUSE BILL 2728

State of Washington

56th Legislature

2000 Regular Session

By Representatives Dickerson, Keiser, Ogden, Lantz, Santos, Cooper, Kenney, Schual-Berke, Kagi, Murray, Edmonds, Constantine, Romero, Tokuda, Kessler and H. Sommers

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1 AN ACT Relating to leave to care for a child; amending RCW
2 50.29.020, 49.78.005, and 49.78.070; adding a new section to chapter
3 50.20 RCW; creating new sections; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the early years
6 of a child's life are critical to the child's healthy brain
7 development. The legislature further finds that the quality of
8 caregiving during the first year of a child's life or during the first
9 year of an adopted child's placement can significantly impact the
10 child's intellectual and emotional growth and social adjustment.
11 Therefore, it is the intent of the legislature to expand opportunities
12 for parents to participate in caregiving for newly born or newly
13 adopted children by establishing a partial wage replacement program for
14 these parents.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 50.20 RCW
16 to read as follows:

17 (1)(a) Subject to (b) of this subsection, an otherwise eligible
18 individual who has left work to care for the individual's child during

1 the child's first year of life or during the first year following the
2 child's placement with the individual for adoption may not be denied
3 benefits for any week under RCW 50.20.050, relating to voluntarily
4 leaving work, or RCW 50.20.010(3), 50.20.080, and 50.22.020(1) relating
5 to availability for work and active search for work, and failure to
6 apply for or refusal to accept suitable work.

7 (b) In circumstances where the necessity for leave was foreseeable
8 based on an expected birth or placement, the individual must have given
9 the employer notice at least thirty days before leave was to begin or,
10 where the birth or placement required leave to begin in less than
11 thirty days, as much notice as was practicable.

12 (2) Benefits are payable under this section for a maximum of five
13 weeks.

14 **Sec. 3.** RCW 50.29.020 and 1995 c 57 s 3 are each amended to read
15 as follows:

16 (1) An experience rating account shall be established and
17 maintained for each employer, except employers as described in RCW
18 50.44.010 and 50.44.030 who have properly elected to make payments in
19 lieu of contributions, taxable local government employers as described
20 in RCW 50.44.035, and those employers who are required to make payments
21 in lieu of contributions, based on existing records of the employment
22 security department. Benefits paid to any eligible individuals shall
23 be charged to the experience rating accounts of each of such
24 individual's employers during the individual's base year in the same
25 ratio that the wages paid by each employer to the individual during the
26 base year bear to the wages paid by all employers to that individual
27 during that base year, except as otherwise provided in this section.

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

35 (a) Benefits paid to any individuals later determined to be
36 ineligible shall not be charged to the experience rating account of any
37 contribution paying employer.

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

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

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

8 (c) Benefits paid which represent the state's share of benefits
9 payable under chapter 50.22 RCW shall not be charged to the experience
10 rating account of any contribution paying employer.

11 (d) In the case of individuals who requalify for benefits under RCW
12 50.20.050 or 50.20.060, benefits based on wage credits earned prior to
13 the disqualifying separation shall not be charged to the experience
14 rating account of the contribution paying employer from whom that
15 separation took place.

16 (e) In the case of individuals identified under RCW 50.20.015,
17 benefits paid with respect to a calendar quarter, which exceed the
18 total amount of wages earned in the state of Washington in the higher
19 of two corresponding calendar quarters included within the individual's
20 determination period, as defined in RCW 50.20.015, shall not be charged
21 to the experience rating account of any contribution paying employer.

22 (f) Benefits paid under section 2 of this act shall not be charged
23 to the experience rating account of any contribution paying employer.

24 (3)(a) Beginning July 1, 1985, a contribution-paying base year
25 employer, not otherwise eligible for relief of charges for benefits
26 under this section, may receive such relief if the benefit charges
27 result from payment to an individual who:

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

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

32 (iii) Is unemployed as a result of closure or severe curtailment of
33 operation at the employer's plant, building, work site, or other
34 facility. This closure must be for reasons directly attributable to a
35 catastrophic occurrence such as fire, flood, or other natural disaster;
36 or

37 (iv) Continues to be employed on a regularly scheduled permanent
38 part-time basis by a base year employer and who at some time during the
39 base year was concurrently employed and subsequently separated from at

1 least one other base year employer. Benefit charge relief ceases when
2 the employment relationship between the employer requesting relief and
3 the claimant is terminated. This subsection does not apply to shared
4 work employers under chapter 50.60 RCW.

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

12 **Sec. 4.** RCW 49.78.005 and 1997 c 16 s 1 are each amended to read
13 as follows:

14 (1) Except as provided in subsection (2) of this section, the
15 department shall cease to administer and enforce this chapter beginning
16 on July 27, 1997, and until the earlier of the following dates:

17 (a) The effective date of the repeal of the federal family and
18 medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6);
19 or

20 (b) July 1st of the year following the year in which amendments to
21 the federal family and medical leave act of 1993 (Act Feb. 5, 1993,
22 P.L. 103-3, 107 Stat. 6) take effect that provide less family leave
23 than is provided under RCW 49.78.030. In determining whether the
24 federal law provides the same or more leave, the department shall only
25 consider whether (i) the total period of leave allowed under the
26 amended federal law is twelve or more workweeks in a twenty-four month
27 period, and (ii) the types of leave authorized under the amended
28 federal law are similar to the types authorized in this chapter.

29 (2)(a) ~~An employee's right under RCW 49.78.070(1) (a) or (b) ((to~~
30 ~~be returned to a workplace within twenty miles of the employee's~~
31 ~~workplace when leave commenced)) shall remain in effect.~~

32 (b) The family leave required by 29 U.S.C. ((29-2612)) Sec. 2612
33 (a)(1)(A) and (B) of the federal family and medical leave act of 1993
34 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) shall be in addition to any
35 leave for sickness or temporary disability because of pregnancy or
36 childbirth.

37 (c) If an employer provides an employee with paid leave that may be
38 used for a purpose described in section 2 of this act, the employee is

1 entitled to the employer-paid leave in addition to the leave during
2 which the employee earns waiting period credits or receives benefits
3 under section 2 of this act. However, an employer may require an
4 employee to substitute any leave during which the employee earns
5 waiting period credits or receives benefits under section 2 of this act
6 or any employer-paid leave, or both, for any part of the weeks of
7 family leave under the federal family and medical leave act of 1993
8 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6).

9 (d) The department shall enforce this subsection under RCW
10 49.78.140 through 49.78.190, except that an initial notice of
11 infraction shall state that the employer has thirty days in which to
12 take corrective action. No infraction or penalty may be assessed if
13 the employer complies with the requirements of the initial notice of
14 infraction.

15 **Sec. 5.** RCW 49.78.070 and 1989 1st ex.s. c 11 s 7 are each amended
16 to read as follows:

17 (1) Subject to subsection (2) of this section, an employee who
18 exercises any right provided under RCW 49.78.030, or who is on leave
19 from work during which the employee earns waiting period credits or
20 receives benefits under section 2 of this act, shall be entitled, upon
21 return from leave or during any reduced leave schedule:

22 (a) To the same position held by the employee when the leave
23 commenced; or

24 (b) To a position with equivalent benefits and pay at a workplace
25 within twenty miles of the employee's workplace when leave commenced;
26 or

27 (c) If the employer's circumstances have so changed that the
28 employee cannot be reinstated to the same position, or a position of
29 equivalent pay and benefits, the employee shall be reinstated in any
30 other position which is vacant and for which the employee is qualified.

31 (2) The entitlement under subsection (1) of this section is subject
32 to bona fide changes in compensation or work duties, and does not apply
33 if:

34 (a) The employee's position is eliminated by a bona fide
35 restructuring, or reduction-in-force;

36 (b) The employee's workplace is permanently or temporarily shut
37 down for at least thirty days;

1 (c) The employee's workplace is moved to a location at least sixty
2 miles from the location of the workplace when leave commenced;
3 (d) An employee on family leave takes another job; or
4 (e) The employee fails to provide timely notice of family leave as
5 required under RCW 49.78.040, or fails to return on the established
6 ending date of leave.

7 NEW SECTION. **Sec. 6.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 7.** If any part of this act is found to be in
12 conflict with federal requirements that are a prescribed condition to
13 the allocation of federal funds to the state or the eligibility of
14 employers in this state for federal unemployment tax credits, the
15 conflicting part of this act is inoperative solely to the extent of the
16 conflict, and the finding or determination does not affect the
17 operation of the remainder of this act. Rules adopted under this act
18 must meet federal requirements that are a necessary condition to the
19 receipt of federal funds by the state or the granting of federal
20 unemployment tax credits to employers in this state.

21 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
22 preservation of the public peace, health, or safety, or support of the
23 state government and its existing public institutions, and takes effect
24 immediately.

25 NEW SECTION. **Sec. 9.** This act applies with respect to weeks of
26 unemployment beginning on or after the Sunday following the day on
27 which the governor signs this act.

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