
HOUSE BILL 1273

State of Washington

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By Representatives Robinson, Sells, Farrell, Hudgins, Kagi, Wylie, Sawyer, Walkinshaw, Moscoso, Ryu, Ormsby, Riccelli, Jenkins, Senn, McBride, Gregerson, Fitzgibbon, Moeller, Reykdal, S. Hunt, Stanford, Bergquist, Santos, Pollet, Fey, and Tarleton

Read first time 01/16/15. Referred to Committee on Labor.

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

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

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

11 The legislature finds that, although family and medical leave
12 laws have assisted individuals to balance the demands of the
13 workplace with their family responsibilities, more needs to be done
14 to achieve the goals of parent and child bonding, family care,
15 children and family health, workforce stability, and economic
16 security. In particular, the legislature finds that many individuals
17 do not have access to family and medical leave laws, and those who do
18 may not be in a financial position to take family and medical leave
19 that is unpaid, and that employer-paid benefits meet only a
20 relatively small part of this need. The legislature declares it to be
21 in the public interest to establish a program that: (1) Allows

1 parents to bond with a newborn or newly placed child, and workers to
2 care for family members with a serious health condition or to recover
3 from their own serious health condition; (2) provides limited and
4 additional income support for a reasonable period while an individual
5 is away from work on family and medical leave; (3) reduces the impact
6 on state income support programs by increasing an individual's
7 ability to provide caregiving services for ((a child)) family members
8 while maintaining an employment relationship; and (4) establishes a
9 wage replacement benefit to be coordinated with current existing
10 state and federal family and medical leave laws.

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

13 The definitions in this section apply throughout this chapter
14 unless the context clearly requires otherwise.

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

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

27 (c) An application year may not begin before the individual's
28 last preceding application year has expired.

29 (2) "Calendar quarter" means the same as in RCW 50.04.050.

30 (3) "Child," ((means a biological or an adopted child)) "health
31 care provider," "parent," "serious health condition," and "spouse"
32 mean the same as in RCW 49.78.020.

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

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

36 (5) "Director" means the director of the)) employment security
37 department.

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

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

2 (8) "Family and medical leave" means leave ~~((:-(a) Because of the~~
3 ~~birth of a child of the employee and in order to care for the child;~~
4 ~~or (b) because of the placement of a child with the employee for~~
5 ~~adoption))~~ for a family member's serious health condition, leave for
6 the birth or placement of a child, and leave for the individual's
7 serious health condition as these types of leave are defined in RCW
8 49.78.020 and described in RCW 49.78.220.

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

11 (10) "Family member" means a child, spouse, or parent of the
12 individual, or pursuant to section 13 of this act, a designated
13 person.

14 (11) "Federal family and medical leave act" means the federal
15 family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3,
16 107 Stat. 6).

17 ~~((11))~~ (12) "Premium" or "premiums" means payments required by
18 this chapter to be made to the department for the family and medical
19 leave insurance account under RCW 49.86.170.

20 (13) "Qualifying year" means the first four of the last five
21 completed calendar quarters or, if eligibility is not established,
22 the last four completed calendar quarters immediately preceding the
23 first day of the individual's application year.

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

27 (14) "Wages" means the same as "wages" for the purpose of payment
28 of contributions in RCW 50.04.320(1).

29 NEW SECTION. Sec. 3. A new section is added to chapter 49.86
30 RCW to read as follows:

31 The definitions of "employer" and "employment" in section 1 of
32 the railroad unemployment insurance act (45 U.S.C. Sec. 351) also
33 apply throughout this chapter unless the context clearly requires
34 otherwise.

35 **Sec. 4.** RCW 49.86.020 and 2007 c 357 s 4 are each amended to
36 read as follows:

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

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

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

9 (a) There has been a birth or placement of a child, or the
10 individual or the individual's family member has a serious health
11 condition, as applicable;

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

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

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

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

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

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

16 **Sec. 5.** RCW 49.86.030 and 2013 2nd sp.s. c 26 s 1 are each
17 amended to read as follows:

18 ~~((When the legislature has specifically appropriated funding and~~
19 ~~enacted an implementation date for benefits, then beginning on that~~
20 ~~specified date,))~~ (1) Beginning October 1, 2017, family and medical
21 leave insurance benefits are payable to an individual during a period
22 in which the individual is unable to perform his or her regular or
23 customary work because he or she is on family and medical leave if
24 the individual:

25 ~~((+1))~~ (a) Files a claim for benefits ~~((in each week in which~~
26 ~~the individual is on family leave, and))~~ as required by rules adopted
27 by the ~~((director))~~ commissioner;

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

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

33 ~~((+4))~~ (d) Consents to the disclosure of information or records
34 deemed private and confidential under ~~((chapter 50.13 RCW))~~ state
35 law. Initial disclosure of this information and these records by
36 ~~((the employment security department))~~ another state agency to the
37 department is solely for purposes related to the administration of
38 this chapter. Further disclosure of this information or these records
39 is subject to RCW 49.86.020~~((+3))~~ (5) and section 16 of this act;

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

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

9 (g) Provides a document authorizing the family member's or
10 individual's health care provider, as applicable, to disclose the
11 family member's or individual's health care information in the form
12 of the certification of a serious health condition.

13 (2)(a) With respect to leave for the birth or placement of a
14 child or a family member's serious health condition, family and
15 medical leave insurance benefits are payable beginning October 1,
16 2017.

17 (b) With respect to leave for an individual's serious health
18 condition, family and medical leave insurance benefits are payable
19 beginning October 1, 2018.

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

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

29 Sec. 7. RCW 49.86.050 and 2007 c 357 s 7 are each amended to
30 read as follows:

31 (1) The maximum number of weeks during which family and medical
32 leave insurance benefits are payable in an application year is (~~five~~
33 ~~weeks~~) twelve weeks for leave for a family member's serious health
34 condition and for the birth or placement of a child, plus twelve
35 weeks for the individual's serious health condition. However,
36 benefits are not payable during a waiting period consisting of the
37 first seven calendar days of family and medical leave taken in an
38 application year with respect to a particular type of family and

1 medical leave, whether the first seven calendar days of family and
2 medical leave are employer paid or unpaid.

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

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

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

25 **Sec. 8.** RCW 49.86.060 and 2007 c 357 s 8 are each amended to
26 read as follows:

27 The amount of family and medical leave insurance benefits shall
28 be determined as follows:

29 (1) (~~The~~) An individual's weekly benefit shall be (~~two hundred~~
30 ~~fifty dollars per week for an individual who at the time of beginning~~
31 ~~family leave was regularly working thirty five hours or more per~~
32 ~~week~~) an amount equal to five and two-tenths percent of the average
33 quarterly wages of the individual's total wages during the two
34 quarters of the individual's qualifying year in which such total
35 wages were highest.

36 (2) (~~If an individual who at the time of beginning family leave~~
37 ~~was regularly working thirty five hours or more per week is on family~~
38 ~~leave for less than thirty five hours but at least eight hours in a~~
39 ~~week, the individual's weekly benefit shall be .025 times the maximum~~

1 ~~weekly benefit times the number of hours of family leave taken in the~~
2 ~~week.)) Beginning October 1, 2017, the maximum weekly benefit amount~~
3 ~~shall be one thousand dollars. By September 30, 2017, and by each~~
4 ~~subsequent September 30th, the department shall calculate to the~~
5 ~~nearest dollar adjusted maximum weekly benefit amounts to account for~~
6 ~~inflation using the consumer price index for urban wage earners and~~
7 ~~clerical workers, CPI-W, or a successor index, for the twelve~~
8 ~~completed calendar months before each September 30th as calculated by~~
9 ~~the United States department of labor. The adjusted maximum weekly~~
10 ~~benefit amounts calculated under this subsection take effect on the~~
11 ~~following January 1st.~~

12 (3) Benefits are not payable for less than eight hours of family
13 and medical leave taken in a week.

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

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

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

33 **Sec. 9.** RCW 49.86.070 and 2007 c 357 s 9 are each amended to
34 read as follows:

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

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

3 ~~(b)) and requirements exist pertaining to estimated tax~~
4 ~~payments((+~~

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

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

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

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

16 **Sec. 10.** RCW 49.86.080 and 2007 c 357 s 10 are each amended to
17 read as follows:

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

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

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

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

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

11 **Sec. 11.** 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
15 under this chapter, the individual is entitled to family and medical
16 leave and, at the established ending date of leave, to be restored to
17 a 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
20 employee entitled to leave under chapter 49.78 RCW is restored to a
21 position of 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
24 medical leave employs ~~((more than))~~ twenty-five or more employees for
25 each working day during each of twenty or more calendar workweeks in
26 the current or preceding calendar year within seventy-five miles of
27 the employee's worksite; and

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

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

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

36 If spouses ~~((or people involved in a legal relationship~~
37 ~~established under chapter 26.60 RCW who))~~ are entitled to leave under
38 this chapter and are employed by the same employer, the employer may

1 require that spouses (~~or people involved in such a relationship~~
2 ~~governed by Title 26 RCW~~) not take such leave concurrently if such
3 leave is taken: (1) For the birth or placement of a child; or (2) for
4 a parent's serious health condition.

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

7 If an individual does not have a spouse, the individual may
8 designate one person for whom the employee will care if the
9 designated person has a serious health condition. An employer may
10 establish a process for an individual to make such a designation
11 within thirty days of the individual's date of hire. Thereafter, the
12 employer must permit the individual to make or change such a
13 designation, as applicable, on an annual basis. If an individual's
14 employer establishes such a process, the individual must make such a
15 designation using the employer's process. If an individual's employer
16 does not establish such a process, the individual may make such a
17 designation when filing a claim for benefits.

18 **Sec. 14.** RCW 49.86.110 and 2007 c 357 s 13 are each amended to
19 read as follows:

20 (1) Beginning January 1, 2017, an employer of individuals not
21 covered by this chapter or a self-employed person, including a sole
22 proprietor, partner, or joint venturer, may elect coverage under this
23 chapter for all individuals in its employ for an initial period of
24 not less than three years or a subsequent period of not less than one
25 year immediately following another period of coverage. The employer
26 or self-employed person must file a notice of election in writing
27 with the (~~director~~) commissioner, as required by the department.
28 The election becomes effective on the date of filing the notice with
29 the commissioner.

30 (2) An employer or self-employed person who has elected coverage
31 may withdraw from coverage within thirty days after the end of the
32 three-year period of coverage, or at such other times as the
33 (~~director~~) commissioner may (~~prescribe~~) adopt by rule, by filing
34 (~~written~~) a notice of withdrawal in writing with the (~~director~~)
35 commissioner, such withdrawal to take effect not sooner than thirty
36 days after filing the notice with the commissioner. Within five days
37 of filing written notice of the withdrawal with the (~~director~~)

1 commissioner, an employer must provide written notice of the
2 withdrawal to all individuals in the employer's employ.

3 (3) The department may cancel elective coverage if the employer
4 or self-employed person fails to make required payments or reports.
5 The department may collect due and unpaid premiums and may levy an
6 additional premium for the remainder of the period of coverage. The
7 cancellation shall be effective no later than thirty days from the
8 date of the notice in writing advising the employer or self-employed
9 person of the cancellation. Within five days of receiving written
10 notice of the cancellation from the commissioner, an employer must
11 provide written notice of the cancellation to all individuals in the
12 employer's employ.

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

18 NEW SECTION. Sec. 15. A new section is added to chapter 49.86
19 RCW to read as follows:

20 (1) Beginning July 1, 2016, for each individual, each employer
21 shall pay a premium to the department based on the amount of the
22 employee's wages. Each employer may deduct from the pay of each
23 individual one-half of the full amount that the employer is required
24 to pay for the individual.

25 (2)(a) Beginning July 1, 2016, and ending December 31, 2015, each
26 employer shall pay a premium to the department of two-tenths of one
27 percent of the employee's wages.

28 (b) Beginning January 1, 2018, and ending December 31, 2018, each
29 employer shall pay a premium to the department of four-tenths of one
30 percent of the employee's wages.

31 (c) By September 1, 2018, and by each subsequent September 1st,
32 the commissioner shall adjust the amount of the premium to ensure
33 that the amount is the lowest rate necessary to pay family and
34 medical leave insurance benefits and administrative costs on a
35 current basis, and maintain actuarial solvency in accordance with
36 recognized insurance principles. The adjusted amount of the premium
37 takes effect for the calendar year beginning after the relevant
38 September 1st.

1 (3) Payments shall be made in the manner and at such intervals as
2 provided in this chapter and directed by the department, and shall be
3 deposited in the family and medical leave insurance account. In
4 developing and implementing the requirements of this section and
5 section 16 of this act, the department shall adopt government
6 efficiencies to improve administration and reduce costs. These
7 efficiencies shall include combined reporting and payment, with a
8 single return, of premiums under this section and contributions under
9 chapter 50.24 RCW. In the payment of premiums, a fractional part of a
10 cent shall be disregarded unless it amounts to one-half cent or more,
11 in which case it shall be increased to one cent.

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

14 (1) In the form and at the times specified in this chapter and by
15 the commissioner, an employer shall make reports, furnish
16 information, and make payments of premiums as required by section 15
17 of this act to the department. In developing and implementing the
18 requirements of this section and section 15 of this act, the
19 department shall adopt government efficiencies to improve
20 administration and reduce costs. These efficiencies shall include
21 combined reporting and payment, with a single return, of premiums
22 under this section and contributions under chapter 50.24 RCW. If the
23 employer is a temporary help company that provides employees on a
24 temporary basis to its customers, the temporary help company is
25 considered the employer for purposes of this section. However, if the
26 temporary help company fails to remit the required premiums, the
27 customer to whom the employees were provided is liable for paying the
28 premiums.

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

34 (b) Information obtained from employer records under this chapter
35 is confidential and not open to public inspection, other than to
36 public employees in the performance of their official duties.
37 However, an interested party shall be supplied with information from
38 employer records to the extent necessary for the proper presentation

1 of the case in question. An employer may authorize inspection of its
2 records by written consent.

3 (3) The requirements relating to the assessment and collection of
4 family and medical leave insurance premiums are the same as the
5 requirements relating to the assessment and collection of
6 contributions under Title 50 RCW, including but not limited to
7 penalties, interest, and department lien rights and collection
8 remedies. These requirements apply to:

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

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

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

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

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

24 **Sec. 17.** RCW 49.86.120 and 2007 c 357 s 14 are each amended to
25 read as follows:

26 (1) Except as provided in section 18(1) of this act, a person
27 ((aggrieved by a decision of the department under this chapter must))
28 may file a notice of appeal ((with the director)) from any
29 determination or redetermination made by the department with the
30 commissioner, by mail or personally, within thirty days after the
31 date on which a copy of the department's decision was ((communicated
32 to)) served on the person. Upon receipt of the notice of appeal, the
33 ((director)) commissioner shall request the assignment of an
34 administrative law judge in accordance with chapter 34.05 RCW to
35 conduct a hearing and issue a proposed decision and order. The
36 hearing shall be conducted in accordance with chapter 34.05 RCW.

37 (2) The administrative law judge's proposed decision and order
38 shall be final and not subject to further appeal unless, within
39 thirty days after the decision is ((communicated to)) served on the

1 interested parties, (~~a party petitions for review by the director.~~
2 ~~If the director's review is timely requested, the director may order~~
3 ~~additional evidence by the administrative law judge. On the basis of~~
4 ~~the evidence before the administrative law judge and such additional~~
5 ~~evidence as the director may order to be taken, the director shall~~
6 ~~render a decision affirming, modifying, or setting aside the~~
7 ~~administrative law judge's decision. The director's decision becomes~~
8 ~~final and not subject to further appeal unless, within thirty days~~
9 ~~after the decision is communicated to the interested parties,)~~) a
10 party files a petition for judicial review as provided in chapter
11 34.05 RCW. (~~The director is a party to any judicial action involving~~
12 ~~the director's decision and shall be represented in the action by the~~
13 ~~attorney general.~~)

14 (3) If, upon (~~administrative or~~) judicial review, the final
15 decision of the applicable department is reversed or modified, (~~the~~
16 ~~administrative law judge or~~) the court in its discretion may award
17 the prevailing party, other than the department, reasonable
18 attorneys' fees and costs (~~to the prevailing party~~). Attorneys'
19 fees and costs owed by the department, if any, are payable from the
20 family and medical leave insurance account.

21 NEW SECTION. Sec. 18. A new section is added to chapter 49.86
22 RCW to read as follows:

23 (1) A determination of amount of benefits potentially payable
24 issued under this chapter shall not serve as a basis for appeal under
25 RCW 49.86.120. However, the determination shall be subject to request
26 by the individual on family and medical leave for redetermination by
27 the commissioner at any time within one year from the date of
28 delivery or mailing of such determination, or any redetermination
29 thereof. A redetermination shall be furnished to the individual in
30 writing and provide the basis for appeal under RCW 49.86.120.

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

36 (3) A determination of allowance of benefits shall become final,
37 in the absence of a timely appeal therefrom. The commissioner may
38 redetermine such allowance at any time within two years following the

1 application year in which such allowance was made in order to recover
2 any benefits for which recovery is provided under RCW 49.86.080.

3 (4) A redetermination may be made at any time: (a) To conform to
4 a final court decision applicable to either an initial determination
5 or a determination of denial or allowance of benefits; (b) in the
6 event of a back pay award or settlement affecting the allowance of
7 benefits; or (c) in the case of misrepresentation or willful failure
8 to report a material fact. Written notice of any such redetermination
9 shall be promptly given by mail or delivered to such interested
10 parties as were notified of the initial determination or
11 determination of denial or allowance of benefits and any new
12 interested party or parties who, pursuant to such rule as the
13 commissioner may adopt, would be an interested party.

14 **Sec. 19.** RCW 49.86.130 and 2007 c 357 s 15 are each amended to
15 read as follows:

16 (1) An employer, temporary help company, employment agency,
17 employee organization, or other person may not discharge, expel, or
18 otherwise discriminate against ((a person)) an individual because he
19 or she has filed or communicated to the employer an intent to file a
20 claim, a complaint, or an appeal, or has testified or is about to
21 testify or has assisted in any proceeding, under this chapter, at any
22 time, including during the waiting period described in RCW 49.86.050
23 and the period in which the ((person)) individual receives family and
24 medical leave insurance benefits under this chapter. ((This section
25 shall be enforced as provided in RCW 51.48.025.))

26 (2) Any individual who believes that he or she has been
27 discharged or otherwise discriminated against by an employer in
28 violation of this section may file a complaint with the commissioner
29 alleging discrimination within ninety days of the date of the alleged
30 violation. Upon receipt of such complaint, the commissioner shall
31 cause an investigation to be made as the commissioner deems
32 appropriate. Within ninety days of the receipt of a complaint filed
33 under this section, the commissioner shall notify the complainant of
34 his or her determination. If, upon such investigation, it is
35 determined that this section has been violated, the commissioner
36 shall bring an action in the superior court of the county in which
37 the violation is alleged to have occurred.

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

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

8 **Sec. 20.** RCW 49.86.140 and 2007 c 357 s 16 are each amended to
9 read as follows:

10 (1)((~~a~~) Leave taken under this chapter must be taken
11 concurrently with any leave taken)) If an individual is entitled to
12 employment protection under this chapter and under the federal family
13 and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107
14 Stat. 6) (~~or under~~), chapter 49.78 RCW, or other applicable
15 federal, state, or local law, the individual is entitled to
16 employment protection under the other applicable law most favorable
17 to the individual.

18 ((~~b~~) An)) (2) Except as provided in this subsection, if an
19 individual is entitled to family and medical leave under this chapter
20 and under the federal family and medical leave act, chapter 49.78
21 RCW, or other applicable federal, state, or local law, the employer
22 may require that leave (~~taken~~) under this chapter be taken
23 concurrently (~~or otherwise coordinated~~) with leave (~~allowed~~)
24 under (~~the terms of a collective bargaining agreement or employer~~
25 policy, as applicable, for the birth or placement of a child)) other
26 applicable laws. The employer must give individuals in its employ
27 written notice of this requirement. Leave from employment under this
28 chapter is in addition to leave from employment during which benefits
29 are paid or are payable under Title 51 RCW or other applicable
30 federal or state industrial insurance laws.

31 (3) In any week in which an individual is earning waiting period
32 credits or receiving benefits under chapter 7.68 RCW, Title 50 or 51
33 RCW, or other applicable federal or state crime victims'
34 compensation, unemployment compensation, industrial insurance, or
35 disability insurance laws, the individual is disqualified from
36 receiving family and medical leave insurance benefits under this
37 chapter.

38 (4)(a) Except as provided in this section, this chapter does not
39 prohibit an employer from negotiating a collective bargaining

1 agreement or adopting employer policies, as applicable, to coordinate
2 existing benefits with leave from employment and wage replacement
3 benefits required under this chapter.

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

9 ~~((b))~~ (c) An individual's ~~((right to leave))~~ rights to
10 employment protection, leave from employment, and wage replacement
11 benefits under this chapter may not be diminished by a collective
12 bargaining agreement entered into or renewed or an employer policy
13 adopted or retained after ~~((July 1, 2008))~~ the effective date of this
14 section. Any agreement by an individual to waive his or her rights
15 under this chapter is void as against public policy.

16 (d) If an employer provides wage replacement benefits to an
17 individual while on family and medical leave through disability
18 insurance or any other means, the individual may elect whether first
19 to receive such benefits or receive family and medical leave
20 insurance benefits under this chapter. An individual may not be
21 required to receive the individual's wage replacement benefits, if
22 any, before receiving family and medical leave insurance benefits
23 under this chapter.

24 **Sec. 21.** RCW 49.86.160 and 2007 c 357 s 18 are each amended to
25 read as follows:

26 The ~~((director))~~ commissioner may adopt rules as necessary to
27 implement this chapter. In adopting rules, the ~~((director))~~
28 commissioner shall maintain consistency with the rules adopted to
29 implement the federal family and medical leave act, and chapter 49.78
30 RCW, to the extent such rules are not in conflict with this chapter.
31 The provisions of RCW 34.05.328 do not apply to rules adopted by the
32 commissioner to implement RCW 49.86.060(1) or section 15(3) of this
33 act.

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

36 The family and medical leave insurance account is created in the
37 custody of the state treasurer. All receipts from the premiums
38 imposed under this chapter must be deposited in the account.

1 Expenditures from the account may be used only for the purposes of
2 the family and medical leave insurance program. Only the (~~director~~
3 ~~of the department of labor and industries~~) commissioner or the
4 (~~director's~~) commissioner's designee may authorize expenditures
5 from the account. The account is subject to the allotment procedures
6 under chapter 43.88 RCW. An appropriation is required for
7 administrative expenses, but not for benefit payments. (~~During the~~
8 ~~2007-2009 fiscal biennium, the legislature may transfer from the~~
9 ~~family leave insurance account to the state general fund such amounts~~
10 ~~as reflect the excess fund balance of the account.~~)

11 **Sec. 23.** RCW 49.86.180 and 2007 c 357 s 20 are each amended to
12 read as follows:

13 Whenever, in the judgment of the state investment board, there
14 shall be in the family and medical leave insurance account funds in
15 excess of that amount deemed by the state investment board to be
16 sufficient to meet the current expenditures properly payable
17 therefrom, the state investment board shall have full power to
18 invest, reinvest, manage, contract, or sell or exchange investments
19 acquired with such excess funds in the manner prescribed by RCW
20 43.84.150, and not otherwise.

21 **Sec. 24.** RCW 43.79A.040 and 2013 c 251 s 5 and 2013 c 88 s 1 are
22 each reenacted and amended to read as follows:

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

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

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

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

4 (b) The following accounts and funds must receive their
5 proportionate share of earnings based upon each account's or fund's
6 average daily balance for the period: The Washington promise
7 scholarship account, the Washington advanced college tuition payment
8 program account, the accessible communities account, the community
9 and technical college innovation account, the agricultural local
10 fund, the American Indian scholarship endowment fund, the foster care
11 scholarship endowment fund, the foster care endowed scholarship trust
12 fund, the contract harvesting revolving account, the Washington state
13 combined fund drive account, the commemorative works account, the
14 county enhanced 911 excise tax account, the toll collection account,
15 the developmental disabilities endowment trust fund, the energy
16 account, the fair fund, the family and medical leave insurance
17 account, the food animal veterinarian conditional scholarship
18 account, the fruit and vegetable inspection account, the future
19 teachers conditional scholarship account, the game farm alternative
20 account, the GET ready for math and science scholarship account, the
21 Washington global health technologies and product development
22 account, the grain inspection revolving fund, the industrial
23 insurance rainy day fund, the juvenile accountability incentive
24 account, the law enforcement officers' and firefighters' plan 2
25 expense fund, the local tourism promotion account, the multiagency
26 permitting team account, the pilotage account, the produce railcar
27 pool account, the regional transportation investment district
28 account, the rural rehabilitation account, the stadium and exhibition
29 center account, the youth athletic facility account, the self-
30 insurance revolving fund, the children's trust fund, the Washington
31 horse racing commission Washington bred owners' bonus fund and
32 breeder awards account, the Washington horse racing commission class
33 C purse fund account, the individual development account program
34 account, the Washington horse racing commission operating account,
35 the life sciences discovery fund, the Washington state heritage
36 center account, the reduced cigarette ignition propensity account,
37 the center for childhood deafness and hearing loss account, the
38 school for the blind account, the Millersylvania park trust fund, the
39 public employees' and retirees' insurance reserve fund, and the
40 radiation perpetual maintenance fund.

1 (c) The following accounts and funds must receive eighty percent
2 of their proportionate share of earnings based upon each account's or
3 fund's average daily balance for the period: The advanced right-of-
4 way revolving fund, the advanced environmental mitigation revolving
5 account, the federal narcotics asset forfeitures account, the high
6 occupancy vehicle account, the local rail service assistance account,
7 and the miscellaneous transportation programs account.

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

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

18 **Sec. 25.** RCW 49.86.210 and 2013 2nd sp.s. c 26 s 2 are each
19 amended to read as follows:

20 Beginning (~~(one year after the implementation date specified by~~
21 ~~the legislature pursuant to RCW 49.86.030)) December 1, 2018, and
22 annually thereafter, the department shall report to the legislature
23 on projected and actual program participation, premium rates, fund
24 balances, and outreach efforts.~~

25 **Sec. 26.** RCW 50.29.021 and 2013 c 244 s 1 and 2013 c 189 s 3 are
26 each reenacted and amended to read as follows:

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

30 (2)(a) An experience rating account shall be established and
31 maintained for each employer, except employers as described in RCW
32 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
33 payments in lieu of contributions, taxable local government employers
34 as described in RCW 50.44.035, and those employers who are required
35 to make payments in lieu of contributions, based on existing records
36 of the employment security department.

37 (b) Benefits paid to an eligible individual shall be charged to
38 the experience rating accounts of each of such individual's employers

1 during the individual's base year in the same ratio that the wages
2 paid by each employer to the individual during the base year bear to
3 the wages paid by all employers to that individual during that base
4 year, except as otherwise provided in this section.

5 (c) When the eligible individual's separating employer is a
6 covered contribution paying base year employer, benefits paid to the
7 eligible individual shall be charged to the experience rating account
8 of only the individual's separating employer if the individual
9 qualifies for benefits under:

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

13 (ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through
14 (x).

15 (3) The legislature finds that certain benefit payments, in whole
16 or in part, should not be charged to the experience rating accounts
17 of employers except those employers described in RCW 50.44.010,
18 50.44.030, and 50.50.030 who have properly elected to make payments
19 in lieu of contributions, taxable local government employers
20 described in RCW 50.44.035, and those employers who are required to
21 make payments in lieu of contributions, as follows:

22 (a) Benefits paid to any individual later determined to be
23 ineligible shall not be charged to the experience rating account of
24 any contribution paying employer, except as provided in subsection
25 (5) of this section.

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
28 account 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
31 nonwork-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
36 paying employer.

37 (d) In the case of individuals who requalify for benefits under
38 RCW 50.20.050 or 50.20.060, benefits based on wage credits earned
39 prior to the disqualifying separation shall not be charged to the

1 experience rating account of the contribution paying employer from
2 whom that separation took place.

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

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

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

21 (h) With respect to claims where the minimum amount payable
22 weekly 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
26 rating 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, except employers
36 as provided in subsection (6) of this section, not otherwise eligible
37 for relief of charges for benefits under this section, may receive
38 such relief if the benefit charges result from payment to an
39 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
5 job requirements;

6 (iii) Is unemployed as a result of closure or severe curtailment
7 of 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
10 disaster;

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

18 (v) Continues to be employed on a regularly scheduled permanent
19 part-time basis by a base year employer and who qualified for two
20 consecutive unemployment claims where wages were attributable to at
21 least one employer who employed the individual in both base years.
22 Benefit charge relief ceases when the employment relationship between
23 the employer requesting relief and the claimant is terminated. This
24 subsection does not apply to shared work employers under chapter
25 50.60 RCW; ((~~or~~))

26 (vi) Was hired to replace an employee who is a member of the
27 military reserves or National Guard and was called to federal active
28 military service by the president of the United States and is
29 subsequently laid off when that employee is reemployed by their
30 employer upon release from active duty within the time provided for
31 reemployment in RCW 73.16.035; or

32 (vii) Worked for an employer for fifteen weeks or less, and was
33 laid off at the end of temporary employment when that individual
34 temporarily replaced a permanent employee receiving family and
35 medical leave insurance benefits under chapter 49.86 RCW, and the
36 layoff is due to the return of that permanent employee. This
37 subsection applies to claims with an effective date on or after July
38 5, 2017.

39 (b) The employer requesting relief of charges under this
40 subsection must request relief in writing within thirty days

1 following mailing to the last known address of the notification of
2 the valid initial determination of such claim, stating the date and
3 reason for the separation or the circumstances of continued
4 employment. The commissioner, upon investigation of the request,
5 shall determine whether relief should be granted.

6 (5) When a benefit claim becomes invalid due to an amendment or
7 adjustment of a report where the employer failed to report or
8 inaccurately reported hours worked or remuneration paid, or both, all
9 benefits paid will be charged to the experience rating account of the
10 contribution paying employer or employers that originally filed the
11 incomplete or inaccurate report or reports. An employer who
12 reimburses the trust fund for benefits paid to workers and who fails
13 to report or inaccurately reported hours worked or remuneration paid,
14 or both, shall reimburse the trust fund for all benefits paid that
15 are based on the originally filed incomplete or inaccurate report or
16 reports.

17 (6) An employer's experience rating account may not be relieved
18 of charges for a benefit payment and an employer who reimburses the
19 trust fund for benefit payments may not be credited for a benefit
20 payment if a benefit payment was made because the employer or
21 employer's agent failed to respond timely or adequately to a written
22 request of the department for information relating to the claim or
23 claims without establishing good cause for the failure and the
24 employer or employer's agent has a pattern of such failures. The
25 commissioner has the authority to determine whether the employer has
26 good cause under this subsection.

27 (a) For the purposes of this subsection, "adequately" means
28 providing accurate information of sufficient quantity and quality
29 that would allow a reasonable person to determine eligibility for
30 benefits.

31 (b)(i) For the purposes of this subsection, "pattern" means a
32 benefit payment was made because the employer or employer's agent
33 failed to respond timely or adequately to a written request of the
34 department for information relating to a claim or claims without
35 establishing good cause for the failure, if the greater of the
36 following calculations for an employer is met:

37 (A) At least three times in the previous two years; or

38 (B) Twenty percent of the total current claims against the
39 employer.

1 (ii) If an employer's agent is utilized, a pattern is established
2 based on each individual client employer that the employer's agent
3 represents.

4 NEW SECTION. **Sec. 27.** A new section is added to chapter 82.04
5 RCW to read as follows:

6 In computing the tax imposed under this chapter, a credit is
7 allowed for an employer with fewer than fifty employees for each
8 working day during each of twenty or more calendar workweeks in the
9 current or preceding calendar year within seventy-five miles of the
10 employee's worksite. The credit is allowed during the first twenty-
11 four months following the hire date of the employer's first employee.
12 The credit is equal to the full amount of premium paid to the
13 department for an individual, less any amount deducted from the pay
14 of the individual. The credit may not exceed the tax otherwise due
15 under this chapter for the tax reporting period. Unused credit may
16 not be carried over to be credited against taxes incurred in
17 subsequent tax reporting periods. The total amount of all credits
18 allowed under this section for an employer may not exceed one
19 thousand dollars. No refunds may be granted for credits under this
20 section.

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

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

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

27 (b) Determine that the rule is needed to achieve the general
28 goals and specific objectives stated under (a) of this subsection,
29 and analyze alternatives to rule making and the consequences of not
30 adopting the rule;

31 (c) Provide notification in the notice of proposed rule making
32 under RCW 34.05.320 that a preliminary cost-benefit analysis is
33 available. The preliminary cost-benefit analysis must fulfill the
34 requirements of the cost-benefit analysis under (d) of this
35 subsection. If the agency files a supplemental notice under RCW
36 34.05.340, the supplemental notice must include notification that a
37 revised preliminary cost-benefit analysis is available. A final cost-

1 benefit analysis must be available when the rule is adopted under RCW
2 34.05.360;

3 (d) Determine that the probable benefits of the rule are greater
4 than its probable costs, taking into account both the qualitative and
5 quantitative benefits and costs and the specific directives of the
6 statute being implemented;

7 (e) Determine, after considering alternative versions of the rule
8 and the analysis required under (b), (c), and (d) of this subsection,
9 that the rule being adopted is the least burdensome alternative for
10 those required to comply with it that will achieve the general goals
11 and specific objectives stated under (a) of this subsection;

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

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

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

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

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

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

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

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

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

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

40 (c) Promote and assist voluntary compliance; and

1 (d) Evaluate whether the rule achieves the purpose for which it
2 was adopted, including, to the maximum extent practicable, the use of
3 interim milestones to assess progress and the use of objectively
4 measurable outcomes.

5 (4) After adopting a rule described in subsection (5) of this
6 section regulating the same activity or subject matter as another
7 provision of federal or state law, an agency must do all of the
8 following:

9 (a) Coordinate implementation and enforcement of the rule with
10 the other federal and state entities regulating the same activity or
11 subject matter by making every effort to do one or more of the
12 following:

- 13 (i) Deferring to the other entity;
- 14 (ii) Designating a lead agency; or
- 15 (iii) Entering into an agreement with the other entities
16 specifying how the agency and entities will coordinate implementation
17 and enforcement.

18 If the agency is unable to comply with this subsection (4)(a),
19 the agency must report to the legislature pursuant to (b) of this
20 subsection;

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

- 22 (i) The existence of any overlap or duplication of other federal
23 or state laws, any differences from federal law, and any known
24 overlap, duplication, or conflict with local laws; and
- 25 (ii) Make recommendations for any legislation that may be
26 necessary to eliminate or mitigate any adverse effects of such
27 overlap, duplication, or difference.

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

30 (i) Significant legislative rules of the departments of ecology,
31 labor and industries, health, revenue, social and health services,
32 and natural resources, the employment security department, the forest
33 practices board, the office of the insurance commissioner, and to the
34 legislative rules of the department of fish and wildlife implementing
35 chapter 77.55 RCW; and

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

1 (b) This section does not apply to:
2 (i) Emergency rules adopted under RCW 34.05.350;
3 (ii) Rules relating only to internal governmental operations that
4 are not subject to violation by a nongovernment party;
5 (iii) Rules adopting or incorporating by reference without
6 material change federal statutes or regulations, Washington state
7 statutes, rules of other Washington state agencies, shoreline master
8 programs other than those programs governing shorelines of statewide
9 significance, or, as referenced by Washington state law, national
10 consensus codes that generally establish industry standards, if the
11 material adopted or incorporated regulates the same subject matter
12 and conduct as the adopting or incorporating rule;
13 (iv) Rules that only correct typographical errors, make address
14 or name changes, or clarify language of a rule without changing its
15 effect;
16 (v) Rules the content of which is explicitly and specifically
17 dictated by statute;
18 (vi) Rules that set or adjust fees under the authority of RCW
19 19.02.075 or that set or adjust fees or rates pursuant to legislative
20 standards, including fees set or adjusted under the authority of RCW
21 19.80.045;
22 (vii) Rules of the department of social and health services
23 relating only to client medical or financial eligibility and rules
24 concerning liability for care of dependents; ((~~or~~))
25 (viii) Rules of the department of revenue that adopt a uniform
26 expiration date for reseller permits as authorized in RCW 82.32.780
27 and 82.32.783; or
28 (ix) Rules of the employment security department to implement RCW
29 49.86.060(1) or section 15(3) of this act.
30 (c) For purposes of this subsection:
31 (i) A "procedural rule" is a rule that adopts, amends, or repeals
32 (A) any procedure, practice, or requirement relating to any agency
33 hearings; (B) any filing or related process requirement for making
34 application to an agency for a license or permit; or (C) any policy
35 statement pertaining to the consistent internal operations of an
36 agency.
37 (ii) An "interpretive rule" is a rule, the violation of which
38 does not subject a person to a penalty or sanction, that sets forth
39 the 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
3 provisions of law pursuant to delegated legislative authority, the
4 violation of which subjects a violator of such rule to a penalty or
5 sanction; (B) establishes, alters, or revokes any qualification or
6 standard for the issuance, suspension, or revocation of a license or
7 permit; or (C) adopts a new, or makes significant amendments to, a
8 policy or 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
12 this section voluntarily.

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

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

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

34 NEW SECTION. **Sec. 29.** If any provision of this act or its
35 application to any person or circumstance is held invalid, the
36 remainder of the act or the application of the provision to other
37 persons or circumstances is not affected.

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