

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1821

54th Legislature
1995 Regular Session

Passed by the House April 22, 1995
Yeas 91 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate April 22, 1995
Yeas 45 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1821** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1821

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1995 Regular Session

State of Washington 54th Legislature 1995 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Kessler, Buck, Quall, Carlson, Casada and Basich)

Read first time 03/01/95.

1 AN ACT Relating to unemployment compensation for persons with
2 public employment contracts; amending RCW 50.04.320, 50.44.050, and
3 50.44.053; creating new sections; and declaring an emergency.

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

5 **Sec. 1.** RCW 50.04.320 and 1986 c 21 s 1 are each amended to read
6 as follows:

7 (1) For the purpose of payment of contributions, "wages" means the
8 remuneration paid by one employer during any calendar year to an
9 individual in its employment under this title or the unemployment
10 compensation law of any other state in the amount specified in RCW
11 50.24.010. If an employer (hereinafter referred to as a successor
12 employer) during any calendar year acquires substantially all the
13 operating assets of another employer (hereinafter referred to as a
14 predecessor employer) or assets used in a separate unit of a trade or
15 business of a predecessor employer, and immediately after the
16 acquisition employs in the individual's trade or business an individual
17 who immediately before the acquisition was employed in the trade or
18 business of the predecessor employer, then, for the purposes of
19 determining the amount of remuneration paid by the successor employer

1 to the individual during the calendar year which is subject to
2 contributions, any remuneration paid to the individual by the
3 predecessor employer during that calendar year and before the
4 acquisition shall be considered as having been paid by the successor
5 employer.

6 (2) For the purpose of payment of benefits, "wages" means the
7 remuneration paid by one or more employers to an individual for
8 employment under this title during his base year: PROVIDED, That at
9 the request of a claimant, wages may be calculated on the basis of
10 remuneration payable. The department shall notify each claimant that
11 wages are calculated on the basis of remuneration paid, but at the
12 claimant's request a redetermination may be performed and based on
13 remuneration payable.

14 (3) For the purpose of payment of benefits and payment of
15 contributions, the term "wages" includes tips which are received after
16 January 1, 1987, while performing services which constitute employment,
17 and which are reported to the employer for federal income tax purposes.

18 (4)(a) "Remuneration" means all compensation paid for personal
19 services including commissions and bonuses and the cash value of all
20 compensation paid in any medium other than cash. The reasonable cash
21 value of compensation paid in any medium other than cash and the
22 reasonable value of gratuities shall be estimated and determined in
23 accordance with rules prescribed by the commissioner. Remuneration
24 does not include payments to members of a reserve component of the
25 armed forces of the United States, including the organized militia of
26 the state of Washington, for the performance of duty for periods not
27 exceeding seventy-two hours at a time.

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, or
32 request of the individual compensated, shall be considered remuneration
33 for the period to which it is assigned. Assignment clearly occurs when
34 the compensation serves to make the individual eligible for all regular
35 fringe benefits for the period to which the compensation is assigned.

36 (c) Settlements or other proceeds received by an individual as a
37 result of a negotiated settlement for termination of an employment
38 contract with a public agency prior to its expiration date shall be
39 considered remuneration. The proceeds shall be deemed assigned in the

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

3 (d) Except as provided in (c) of this subsection, the provisions of
4 this ((section)) subsection (4) pertaining to the assignment of
5 previously accrued compensation shall not apply to individuals subject
6 to RCW 50.44.050.

7 **Sec. 2.** RCW 50.44.050 and 1990 c 33 s 587 are each amended to read
8 as follows:

9 Except as otherwise provided in subsections (1) through (4) of this
10 section, benefits based on services in employment covered by or
11 pursuant to this chapter shall be payable on the same terms and subject
12 to the same conditions as compensation payable on the basis of other
13 service subject to this title.

14 (1) Benefits based on service in an instructional, research or
15 principal administrative capacity for an educational institution shall
16 not be paid to an individual for any week of unemployment which
17 commences during the period between two successive academic years or
18 between two successive academic terms within an academic year (or, when
19 an agreement provides instead for a similar period between two regular
20 but not successive terms within an academic year, during such period)
21 if such individual performs such services in the first of such academic
22 years or terms and if there is a contract or reasonable assurance that
23 such individual will perform services in any such capacity for any
24 educational institution in the second of such academic years or terms.
25 Any employee of a common school district who is presumed to be
26 reemployed pursuant to RCW 28A.405.210 shall be deemed to have a
27 contract for the ensuing term.

28 (2) Benefits shall not be paid based on services in any other
29 capacity for an educational institution for any week of unemployment
30 which commences during the period between two successive academic years
31 or between two successive academic terms within an academic year, if
32 such individual performs such services in the first of such academic
33 years or terms and there is a reasonable assurance that such individual
34 will perform such services in the second of such academic years or
35 terms: PROVIDED, That if benefits are denied to any individual under
36 this subsection and that individual was not offered an opportunity to
37 perform such services for the educational institution for the second of
38 such academic years or terms, the individual is entitled to a

1 retroactive payment of benefits for each week for which the individual
2 filed a timely claim for benefits and for which benefits were denied
3 solely by reason of this subsection.

4 (3) Benefits shall not be paid based on any services described in
5 subsections (1) and (2) of this section for any week of unemployment
6 which commences during an established and customary vacation period or
7 holiday recess if such individual performs such services in the period
8 immediately before such vacation period or holiday recess, and there is
9 a reasonable assurance that such individual will perform such services
10 in the period immediately following such vacation period or holiday
11 recess.

12 (4) Benefits shall not be paid (as specified in subsections (1),
13 (2), or (3) of this section) based on any services described in
14 subsections (1) or (2) of this section to any individual who performed
15 such services in an educational institution while in the employ of an
16 educational service district which is established pursuant to chapter
17 28A.310 RCW and exists to provide services to local school districts.

18 (5) As used in subsection (1) of this section, "academic year"
19 means, with respect to services described in subsection (1) of this
20 section performed by part-time faculty at community colleges and
21 technical colleges: Fall, winter, spring, and summer quarters or
22 comparable semesters unless, based upon objective criteria including
23 enrollment and staffing, the quarter or comparable semester is not in
24 fact a part of the academic year for the particular institution.

25 **Sec. 3.** RCW 50.44.053 and 1985 ex.s. c 5 s 9 are each amended to
26 read as follows:

27 The term "reasonable assurance," as used in RCW 50.44.050, means a
28 written, verbal, or implied agreement that the employee will perform
29 services in the same capacity during the ensuing academic year or term
30 as in the first academic year or term. However, with respect to
31 services described in RCW 50.44.050(1) performed by part-time faculty
32 for community colleges and technical colleges, the term "reasonable
33 assurance" does not include an agreement that is contingent on
34 enrollment, funding, or program changes. A person shall not be deemed
35 to be performing services "in the same capacity" unless those services
36 are rendered under the same terms or conditions of employment in the
37 ensuing year as in the first academic year or term.

1 NEW SECTION. **Sec. 4.** The legislature finds that, as a general
2 rule with limited exceptions, employees of educational institutions
3 expect to be employed for no more than a nine or ten-month school year
4 with a break between school years for the traditional summer vacation.

5 Because of the decision in *Evans v. Employment Security Department*,
6 72 Wn. App. 862 (1994), the legislature finds it necessary to clarify
7 legislative intent with regard to unemployment compensation for
8 employees of educational institutions. The 1995 c . . . s 2 (section
9 2 of this act) amendment to RCW 50.44.050 is intended to clarify that
10 for the part-time faculty at two-year institutions of higher education,
11 summer quarter may be expected to be a time of employment, unless
12 otherwise shown. However, the 1995 c . . . s 2 (section 2 of this act)
13 amendment to RCW 50.44.050 is not intended to change the general rules
14 used by the employment security department prior to the *Evans* decision
15 regarding unemployment compensation for other employees of educational
16 institutions.

17 NEW SECTION. **Sec. 5.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 6.** If any part of this act is found to be in
22 conflict with federal requirements that are a prescribed condition to
23 the allocation of federal funds to the state or the eligibility of
24 employers in this state for federal unemployment tax credits, the
25 conflicting part of this act is hereby declared to be inoperative
26 solely to the extent of the conflict, and such finding or determination
27 shall not affect the operation of the remainder of this act. The rules
28 under this act shall meet federal requirements that are a necessary
29 condition to the receipt of federal funds by the state or the granting
30 of federal unemployment tax credits to employers in this state.

31 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
32 preservation of the public peace, health, or safety, or support of the
33 state government and its existing public institutions, and shall take
34 effect immediately.

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