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**HOUSE BILL 1116**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Robinson, Doglio, Senn, Reeves, Gregerson, Frame, Lytton, Kagi, Stonier, Tarleton, Jinkins, Ortiz-Self, Ormsby, Macri, Riccelli, Tharinger, Appleton, Stanford, Peterson, McBride, Kloba, Kirby, Dolan, Hudgins, Wylie, Slatter, Santos, Pollet, Farrell, Bergquist, Goodman, and Sells

AN ACT Relating to implementing family and medical leave insurance; amending RCW 49.86.005, 49.86.010, 49.86.020, 49.86.030, 49.86.050, 49.86.060, 49.86.070, 49.86.080, 49.86.090, 49.86.110, 49.86.120, 49.86.130, 49.86.140, 49.86.160, 49.86.170, 49.86.180, and 49.86.210; reenacting and amending RCW 43.79A.040, 50.29.021, and 34.05.328; adding new sections to chapter 49.86 RCW; creating a new section; repealing RCW 49.86.100; and prescribing penalties.

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

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

The legislature finds that, although family and medical leave laws have assisted individuals to balance the demands of the workplace with their family responsibilities, more needs to be done to achieve the goals of parent and child bonding, family care, children and family health, workforce stability, and economic security. In particular, the legislature finds that many individuals do not have access to family and medical leave laws, and those who do may not be in a financial position to take family and medical leave that is unpaid, and that employer-paid benefits meet only a relatively small part of this need. The legislature declares it to be in the public interest to establish a program that: (1) Allows parents to bond with a newborn or newly placed child, workers to care for family members with a serious health condition or to recover from their own serious health condition, and workers to deal with exigencies arising out of the military service of a family member; (2) provides limited and additional income support for a reasonable period while an individual is away from work on family and medical leave; (3) reduces the impact on state income support programs by increasing an individual's ability to provide caregiving services for ((~~a child~~)) family members while maintaining an employment relationship; and (4) establishes a wage replacement benefit to be coordinated with current existing state and federal family and medical leave laws.

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

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

(1)(a) With respect to leave for the birth or placement of a child, "application year" means the twelve-month period beginning on the first day of the calendar week of the birth or placement of the child.

(b) With respect to leave for a family member's or the individual's serious health condition, or leave for military exigency, "application year" means the twelve-month period beginning on the first day of the calendar week in which an individual files an application for family and medical leave insurance benefits ((~~and, thereafter, the twelve-month period beginning with the first day of the calendar week in which the individual next files an application for family leave insurance benefits after the expiration of the individual's last preceding application year~~)).

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

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

(3) "Child" means a biological ((~~or an~~)), adopted ((~~child~~)), or foster child, and a stepchild, a legal ward, or a child of a person standing in loco parentis.

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

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

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

(6) "Employer" means: (a) ((~~The same as in RCW 50.04.080~~)) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer; and (b) the state and its political subdivisions.

(7) "Employment" ((~~has the meaning provided in RCW 50.04.100~~)) means personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship, including service in interstate commerce, performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied. "Employment" does not include individuals working as independent contractors or self-employed individuals.

(8) "Family and medical leave" means leave((~~: (a) Because of the birth of a child of the employee and in order to care for the child; or (b) because of the placement of a child with the employee for adoption~~)) for a family member's serious health condition, leave for the birth or placement of a child under the age of eighteen, and leave for the individual's serious health condition as these types of leave are defined in RCW 49.78.020 and described in RCW 49.78.220, and leave taken by a family member for a military exigency.

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

(10) "Family member" means a child, spouse, parent, grandparent, grandchild, or sibling of the individual, or any person related by blood or affinity whose close association with the individual is the equivalent of a family relationship.

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

((~~(11)~~)) (12) "Health care provider" means the same as in RCW 49.78.020 except that "director" means commissioner.

(13) "Independent contractor" means an individual performing services where:

(a)(i) The individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(ii) The service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

(iii) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service.

(b) Or as a separate alternative, it does not constitute employment subject to this title if it is shown that:

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

(ii) The service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(iii) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or such individual has a principal place of business for the work the individual is conducting that is eligible for a business deduction for federal income tax purposes;

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

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

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

(vii) If the services require registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW, the individual has a valid contractor registration under chapter 18.27 RCW or electrical contractor license under chapter 19.28 RCW, on the date of the contract for service.

(14) "Individual's average weekly wage" is the quotient derived by dividing the individual's total wages during the two quarters of the individual's qualifying year in which total wages were highest by twenty-six. If the result is not a multiple of one dollar, the department must round the result to the next lower multiple of one dollar.

(15) "Military exigency" means a purpose for which leave is permitted under the federal family and medical leave act and implementing rules, as they existed on the effective date of this section, because of a qualifying exigency.

(16) "Parent" means the biological or adoptive parent of the individual or the individual's spouse or an individual who stood in loco parentis to the individual or the individual's spouse when the individual or the individual's spouse was a child.

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

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

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

(19) "Serious health condition" means the same as in RCW 49.78.020.

(20) "Spouse" means the same as in RCW 49.78.020.

(21) "State average weekly wage" means the average weekly wage calculated under RCW 50.04.355.

(22) "Wages" means the same as "wages" for the purpose of payment of contributions in RCW 50.04.320(1), except that only wages paid to an individual for services in the state are wages for purposes of this chapter. "Wages" for purposes of elective coverage under RCW 49.86.110 has the meaning as defined by rule.

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

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

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

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

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

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

(a) There has been a birth or placement of a child under the age of eighteen, or the individual or the individual's family member has a serious health condition, or the individual qualifies for military exigency leave; and

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

(4) The department may require that: (a) An application for benefits under this chapter be supported by a certification issued by the health care provider providing health care to the individual or the individual's family member, as applicable, and (b) the individual provides documentation of a military exigency.

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

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

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

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

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

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

((~~(2)~~)) (b) Has ((~~been employed~~)) worked for an employer for at least ((~~six hundred eighty hours in employment~~)) three hundred forty hours during the individual's qualifying year or has met the requirements of elective coverage under RCW 49.86.110;

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

((~~(4)~~)) (d) Consents to the disclosure of information or records deemed private and confidential under ((~~chapter 50.13 RCW~~)) state law. Initial disclosure of this information and these records by ((~~the employment security department~~)) another state agency to the department is solely for purposes related to the administration of this chapter. Further disclosure of this information or these records is subject to RCW 49.86.020((~~(3)~~)) (5) and section 14 of this act;

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

~~(6) Documents that he or she has provided~~)) (f) Provides his or her social security number;

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

(h) Provides the employer from whom family and medical leave is to be taken with written notice of the individual's intention to take family leave in the same manner as an employee is required to provide notice in RCW 49.78.250 and, in the individual's initial application for benefits, attests that written notice has been provided; and

(i) If requested by the employer, provides documentation of a military exigency.

(2) An individual who is not working for an employer at the time of filing an application for benefits is exempt from subsection (1)(h) and (i) of this section.

(3)(a) With respect to leave for the birth or placement of a child or a family member's serious health condition or military exigency leave, family and medical leave insurance benefits are payable beginning October 1, 2019.

(b) With respect to leave for an individual's serious health condition, family and medical leave insurance benefits are payable beginning October 1, 2020.

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

(1) The maximum number of weeks during which family and medical leave insurance benefits are payable in an application year is ((~~five weeks~~)) twenty-six total weeks for leave for a family member's serious health condition, for military exigency leave, and for the birth or placement of a child, plus twelve weeks for the individual's serious health condition. However, benefits are not payable during a waiting period consisting of the first seven calendar days of family and medical leave taken in an application year for an individual's or family member's serious health condition, whether the first seven calendar days of family and medical leave are employer paid or unpaid.

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

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

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

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

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

(1) ((~~The weekly benefit shall be two hundred fifty dollars per week for an individual who at the time of beginning family leave was regularly working thirty-five hours or more per week.~~)) If the individual's average weekly wage is: (a) Fifty percent or less of the state average weekly wage, the individual's weekly benefit is ninety percent of the individual's average weekly wage; or (b) more than fifty percent of the state average weekly wage, the individual's weekly benefit is the sum of: (i) Ninety percent of the individual's average weekly wage up to fifty percent of the state average weekly wage; and (ii) fifty percent of the individual's average weekly wage that is greater than fifty percent of the state average weekly wage.

(2) ((~~If an individual who at the time of beginning family leave was regularly working thirty-five hours or more per week is on family leave for less than thirty-five hours but at least eight hours in a week, the individual's weekly benefit shall be .025 times the maximum weekly benefit times the number of hours of family leave taken in the week.~~)) Beginning October 1, 2019, the maximum weekly benefit amount shall be one thousand dollars. By September 30, 2020, and by each subsequent September 30th, the department shall adjust the maximum weekly benefit amount to ninety percent of the state average weekly wage. The adjusted maximum weekly benefit amount takes effect on the following January 1st.

(3) An individual may submit weekly claims on an intermittent basis; however, benefits are not payable for less than eight hours of family and medical leave taken in a week.

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

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

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

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

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

(a) The internal revenue service has determined that benefits are subject to federal income tax;

(b) Requirements exist pertaining to estimated tax payments;

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

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

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

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

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

(1) If family and medical leave insurance benefits are paid erroneously or as a result of willful misrepresentation, or if a claim for family and medical leave benefits is rejected after benefits are paid, ((~~RCW 51.32.240 shall apply, except that appeals are governed by RCW 49.86.120, penalties are paid into the family leave insurance account, and the department shall seek repayment of benefits from the recipient~~)) the department shall issue an overpayment assessment setting forth the reasons for, and the amount of, the overpayment. The recipient must repay the amount assessed and recoupment may be made from any future payments due the recipient under this chapter.

(2) The commissioner may waive an overpayment if the commissioner finds that the overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience.

(3) If any overpayment was induced by willful misrepresentation, the recipient shall pay, in addition to the amount assessed, a penalty of fifty percent of the total of any such payments. The amount of the total sum may be recouped from any future payments due the recipient under this chapter, and the amount of such penalty shall be placed in the family and medical leave account. The repayment or recoupment must be demanded or ordered within three years of the discovery of the willful misrepresentation.

(4) Appeals of overpayment assessments and penalties shall be governed by RCW 49.86.120.

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

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

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

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

**Sec.**  RCW 49.86.090 and 2007 c 357 s 11 are each amended to read as follows:

(1) During a period in which an individual receives family and medical leave insurance benefits or earns waiting period credits under this chapter, the individual is entitled to family and medical leave and, at the established ending date of leave, to be restored to a position of employment with the employer from whom leave was taken.

(2) The individual entitled to leave under this section shall be restored to a position of employment in the same manner and under the same conditions as an employee entitled to leave under chapter 49.78 RCW is restored to a position of employment, as specified in RCW 49.78.280.

(3) This section applies only to an individual if:

(a) The employer from whom the individual takes family and medical leave ((~~employs more than twenty-five employees~~)) has eight or more employees in employment when the individual applies. The department shall interpret this subsection (3)(a) consistent with rules of the Washington state human rights commission; and

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

(4) This section applies only to an individual who was in employment at the time of filing an application for benefits.

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

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

Except for any individual who is not employed at the time of application for benefits, during any period an individual receives family and medical leave insurance benefits, the employer must maintain any health plan coverage for the duration of the leave at the level and under the conditions coverage would have been provided if the individual had continued in employment continuously for the duration of the leave.

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

(1) ((~~An employer of individuals not covered by this chapter~~)) Beginning January 1, 2019, an independent contractor, or a self-employed person, including a sole proprietor, partner, or joint venturer, may elect coverage under this chapter ((~~for all individuals in its employ~~)) for the independent contractor or self-employed person for an initial period of not less than three years or a subsequent period of not less than one year immediately following another period of coverage. The ((~~employer~~)) independent contractor or self-employed person must file a notice of election in writing with the ((~~director~~)) commissioner, as required by the department. The election becomes effective on the date when the independent contractor or self-employed person establishes three hundred forty hours following the date of filing the notice.

(2) An ((~~employer~~)) independent contractor or self-employed person who has elected coverage may withdraw from coverage within thirty days after the end of the three-year period of coverage, or at such other times as the ((~~director~~)) commissioner may ((~~prescribe~~)) adopt by rule, by filing ((~~written~~)) a notice of withdrawal in writing with the ((~~director~~)) commissioner, such withdrawal to take effect not sooner than thirty days after filing the notice((~~. Within five days of filing written notice of the withdrawal with the director, an employer must provide written notice of the withdrawal to all individuals in the employer's employ~~)) with the commissioner.

(3) The department may cancel elective coverage if the independent contractor or self-employed person fails to make required payments or reports. The department may collect due and unpaid premiums and may levy an additional premium for the remainder of the period of coverage. The cancellation must be effective no later than thirty days from the date of the notice in writing advising the independent contractor or self-employed person of the cancellation.

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

(5) The department shall adopt rules for determining the wages of an independent contractor or self-employed individual.

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

(1) Beginning July 1, 2018, the department shall assess for each individual employed by an employer and for each individual electing coverage pursuant to RCW 49.86.110 a premium based on the amount of the individual's wages. Each employer may deduct from the wages of each individual up to one-half of the full amount that the employer is required to pay for the individual.

(2)(a) Beginning July 1, 2018, and ending December 31, 2019, each employer and those electing coverage pursuant to RCW 49.86.110 shall pay a premium to the department of two hundred fifty-five thousandths of one percent of the individual's wages.

(b) Beginning January 1, 2020, and ending December 31, 2020, each employer and those electing coverage pursuant to RCW 49.86.110 shall pay a premium to the department of fifty-one hundredths of one percent of the individual's wages.

(c) For calendar year 2021 and thereafter, each employer and those electing coverage pursuant to RCW 49.86.110 shall pay a premium to the department based on the family and medical leave insurance account balance ratio as of September 30th of the previous year. The commissioner shall calculate the account balance ratio by dividing the balance of the family and medical leave insurance account by total wages paid by employers and those electing coverage pursuant to RCW 49.86.110. The division shall be carried to the fourth decimal place with the remaining fraction disregarded unless it amounts to five thousandths or more, in which case the fourth decimal place shall be rounded to the next higher digit. If the account balance ratio is:

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

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

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

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

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

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

(3) Beginning January 1, 2022, if the fund balance ratio calculated in subsection (2) of this section is below 0.05 percent, each employer and those electing coverage pursuant to RCW 49.86.110 shall also be charged a solvency surcharge at the lowest rate necessary to provide revenue to fund administrative and benefit costs for the calendar year, as determined by the commissioner. The surcharge shall be at least 0.10 percent and no more than 0.6 percent.

(4) Payments shall be made in the manner and at such intervals as provided in this chapter and directed by the department, and shall be deposited in the family and medical leave insurance account. In the payment of premiums, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

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

(1) In the form and at the times specified in this chapter and by the commissioner, an employer and those electing coverage under RCW 49.86.110 shall make reports, furnish information, and make payments of premiums as required by section 13 of this act to the department. In developing and implementing the requirements of this section and section 13 of this act, the department shall adopt government efficiencies to improve administration and reduce costs. These efficiencies shall include, to the extent feasible, combined reporting and payment, with a single return, of premiums under this section and contributions under chapter 50.24 RCW. If the employer is a temporary help company that provides employees on a temporary basis to its customers, the temporary help company is considered the employer for purposes of this section. However, if the temporary help company fails to remit the required premiums, the customer to whom the employees were provided is liable for paying the premiums.

(2)(a) An employer and those electing coverage under RCW 49.86.110 must keep at his or her place of business a record of employment from which the information needed by the department for purposes of this chapter may be obtained. This record must at all times be open to the inspection of the commissioner or department employees designated by the commissioner.

(b) Information obtained under this chapter from employer records and records of those electing coverage is confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, an interested party shall be supplied with information from employer records to the extent necessary for the proper presentation of the case in question. An employer or those electing coverage may authorize inspection of its records by written consent.

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

(a) An employer or those electing coverage under RCW 49.86.110 that fails under this chapter to make the required reports, or fails to remit the full amount of the premiums when due;

(b) An employer or those electing coverage under RCW 49.86.110 that willfully makes a false statement or misrepresentation regarding a material fact, or willfully fails to report a material fact, to avoid making the required reports or remitting the full amount of the premiums when due under this chapter;

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

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

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

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

(1) Except as provided in section 16(1) of this act, a person ((~~aggrieved by a decision of the department under this chapter must~~)) may file a notice of appeal ((~~with the director~~)) from any determination or redetermination made by the department with the commissioner, by mail or personally, within thirty days after the date on which a copy of the department's decision was ((~~communicated to~~)) served on the person. Upon receipt of the notice of appeal, the ((~~director~~)) commissioner shall request the assignment of an administrative law judge in accordance with chapter 34.05 RCW to conduct a hearing and issue a proposed decision and order. The hearing shall be conducted in accordance with chapter 34.05 RCW.

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

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

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

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

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

(3) A determination of allowance of benefits shall become final, in the absence of a timely appeal therefrom. The commissioner may redetermine such allowance at any time within two years following the application year in which such allowance was made in order to recover any benefits for which recovery is provided under RCW 49.86.080.

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

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

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

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

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

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

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

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

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

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

(4)(a) Except as provided in this section, this chapter does not prohibit an employer from negotiating a collective bargaining agreement or adopting employer policies, as applicable, to coordinate existing benefits with leave from employment and wage replacement benefits required under this chapter.

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

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

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

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

The ((~~director~~)) commissioner may adopt rules as necessary to implement this chapter. In adopting rules, the ((~~director~~)) commissioner shall maintain consistency with the rules adopted to implement the federal family and medical leave act, and chapter 49.78 RCW, to the extent such rules are not in conflict with this chapter. RCW 34.05.328 does not apply to rules adopted by the commissioner to implement RCW 49.86.060(1) or section 13(3) of this act.

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

The family and medical leave insurance account is created in the custody of the state treasurer. All receipts from the premiums imposed under this chapter must be deposited in the account. Expenditures from the account may be used only for the purposes of the family and medical leave insurance program. Only the ((~~director of the department of labor and industries~~)) commissioner or the ((~~director's~~)) commissioner's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW. An appropriation is required for administrative expenses, but not for benefit payments. ((~~During the 2007-2009 fiscal biennium, the legislature may transfer from the family leave insurance account to the state general fund such amounts as reflect the excess fund balance of the account.~~))

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

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

**Sec.**  RCW 43.79A.040 and 2016 c 203 s 2, 2016 c 173 s 10, 2016 c 69 s 21, and 2016 c 39 s 7 are each reenacted and amended to read as follows:

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

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

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

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

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 24/7 sobriety account, the Washington promise scholarship account, the Washington advanced college tuition payment program account, the Washington college savings program account, the accessible communities account, the Washington achieving a better life experience program account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county enhanced 911 excise tax account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family and medical leave insurance account, the food animal veterinarian conditional scholarship account, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the multiagency permitting team account, the pilotage account, the produce railcar pool account, the regional transportation investment district account, the rural rehabilitation account, the Washington sexual assault kit account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state heritage center account, the reduced cigarette ignition propensity account, the center for childhood deafness and hearing loss account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, and the radiation perpetual maintenance fund.

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

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

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

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

Beginning ((~~one year after the implementation date specified by the legislature pursuant to RCW 49.86.030~~)) December 1, 2020, and annually thereafter, the department shall report to the legislature on:

(1) Projected and actual program participation((~~,~~));

(2) Premium rates((~~,~~));

(3) Fund balances((~~,~~));

(4) Benefits paid;

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

(6) Costs of providing benefits; and

(7) Outreach efforts.

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

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

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

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

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

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

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

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

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

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

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

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

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

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

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

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

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

(h) With respect to claims where the minimum amount payable weekly is increased to one hundred fifty-five dollars pursuant to RCW 50.20.1201(3), benefits paid that exceed the benefits that would have been paid if the minimum amount payable weekly had been calculated pursuant to RCW 50.20.120 shall not be charged to the experience rating account of any contribution paying employer.

(i) Upon approval of an individual's training benefits plan submitted in accordance with RCW 50.22.155(2), an individual is considered enrolled in training, and regular benefits beginning with the week of approval shall not be charged to the experience rating account of any contribution paying employer.

(j) Training benefits paid to an individual under RCW 50.22.155 shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, except employers as provided in subsection (6) of this section, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

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

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

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

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

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

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

(vii) Worked for an employer for forty weeks or less, and was laid off at the end of temporary employment when that individual temporarily replaced a permanent employee receiving family and medical leave insurance benefits under chapter 49.86 RCW, and the layoff is due to the return of that permanent employee. This subsection applies to claims with an effective date on or after July 7, 2019.

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

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

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

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

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

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

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

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

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

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

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

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

(c) Provide notification in the notice of proposed rule making under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW 34.05.340, the supplemental notice must include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis must be available when the rule is adopted under RCW 34.05.360;

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

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

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

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

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

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

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

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

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

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

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

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

(c) Promote and assist voluntary compliance; and

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

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

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

(i) Deferring to the other entity;

(ii) Designating a lead agency; or

(iii) Entering into an agreement with the other entities specifying how the agency and entities will coordinate implementation and enforcement.

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

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

(i) The existence of any overlap or duplication of other federal or state laws, any differences from federal law, and any known overlap, duplication, or conflict with local laws; and

(ii) Make recommendations for any legislation that may be necessary to eliminate or mitigate any adverse effects of such overlap, duplication, or difference.

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

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

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

(b) This section does not apply to:

(i) Emergency rules adopted under RCW 34.05.350;

(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(iii) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(iv) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(v) Rules the content of which is explicitly and specifically dictated by statute;

(vi) Rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045;

(vii) Rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents; ((~~or~~))

(viii) Rules of the department of revenue that adopt a uniform expiration date for reseller permits as authorized in RCW 82.32.780 and 82.32.783; or

(ix) Rules of the employment security department to implement RCW 49.86.060(1) or section 13(3) of this act.

(c) For purposes of this subsection:

(i) A "procedural rule" is a rule that adopts, amends, or repeals (A) any procedure, practice, or requirement relating to any agency hearings; (B) any filing or related process requirement for making application to an agency for a license or permit; or (C) any policy statement pertaining to the consistent internal operations of an agency.

(ii) An "interpretive rule" is a rule, the violation of which does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of statutory provisions it administers.

(iii) A "significant legislative rule" is a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program.

(d) In the notice of proposed rule making under RCW 34.05.320, an agency must state whether this section applies to the proposed rule pursuant to (a)(i) of this subsection, or if the agency will apply this section voluntarily.

(6) By January 31, 1996, and by January 31st of each even-numbered year thereafter, the office of regulatory assistance, after consulting with state agencies, counties, and cities, and business, labor, and environmental organizations, must report to the governor and the legislature regarding the effects of this section on the regulatory system in this state. The report must document:

(a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;

(b) The costs incurred by state agencies in complying with this section;

(c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;

(d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;

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

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

NEW SECTION. **Sec.**  RCW 49.86.100 (Employment by same employer) and 2007 c 357 s 12 are each repealed.

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

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

**--- END ---**