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HOUSE BILL 2703

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State of Washington

65th Legislature

2018 Regular Session

By Representatives Sells, McCabe, Doglio, Dolan, Gregerson, and Ortiz-Self; by request of Employment Security Department

Read first time 01/12/18. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to clarifying hours and wages for education  
2 employee compensation claims; amending RCW 50.44.050, 50.44.053, and  
3 50.44.055; and creating new sections.

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

5 **Sec. 1.** RCW 50.44.050 and 2001 c 100 s 2 are each amended to  
6 read as follows:

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

12 (1) Benefits based on ~~((any—and—all))~~ service in an  
13 instructional, research, or principal administrative capacity for  
14 ~~((any—and—all))~~ an educational institution~~((s))~~ shall not be paid to  
15 an individual for any week of unemployment which commences during the  
16 period between two successive academic years or between two  
17 successive academic terms within an academic year (or, when an  
18 agreement provides instead for a similar period between two regular  
19 but not successive terms within an academic year, during such period)  
20 if such individual performs such services in the first of such  
21 academic years or terms and if there is a contract or reasonable

1 assurance that such individual will perform services in any such  
2 capacity for ~~((any))~~ an educational institution in the second of such  
3 academic years or terms. ~~((Any employee of a common school district  
4 who is presumed to be reemployed pursuant to RCW 28A.405.210 shall be  
5 deemed to have a contract for the ensuing term.))~~

6 (2) Benefits shall not be paid based on ~~((any and all))~~ services  
7 in any other capacity for ~~((any and all))~~ an educational  
8 institution~~((s))~~ for any week of unemployment which commences during  
9 the period between two successive academic years or between two  
10 successive academic terms within an academic year, if such individual  
11 performs such services in the first of such academic years or terms  
12 and there is a reasonable assurance that such individual will perform  
13 such services in the second of such academic years or terms:  
14 PROVIDED, That if benefits are denied to any individual under this  
15 subsection and that individual was not offered an opportunity to  
16 perform such services for the educational institution for the second  
17 of such academic years or terms, the individual is entitled to a  
18 retroactive payment of benefits for each week for which the  
19 individual filed a timely claim for benefits and for which benefits  
20 were denied solely by reason of this subsection.

21 (3) Benefits shall not be paid based on any services described in  
22 subsections (1) and (2) of this section for any week of unemployment  
23 which commences during an established and customary vacation period  
24 or holiday recess if such individual performs such services for  
25 ~~((any))~~ an educational institution in the period immediately before  
26 such vacation period or holiday recess, and there is a reasonable  
27 assurance that such individual will perform such services for ~~((any))~~  
28 an educational institution in the period immediately following such  
29 vacation period or holiday recess.

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

37 (5) When an individual performs services for more than one  
38 educational institution in an academic year or term, wages earned by  
39 the individual from those educational institutions that do not  
40 provide a contract or reasonable assurance of employment in the

1 subsequent academic year or term may be used to establish a claim for  
2 benefits, even if a contract or reasonable assurance exists for  
3 another educational institution.

4 (6) As used in this section, "academic year" means: Fall, winter,  
5 spring, and summer quarters or comparable semesters unless, based  
6 upon objective criteria including enrollment and staffing, the  
7 quarter or comparable semester is not in fact a part of the academic  
8 year for the particular institution.

9 **Sec. 2.** RCW 50.44.053 and 2001 c 99 s 2 are each amended to read  
10 as follows:

11 ~~(1) The ((term "reasonable assurance," as used in RCW 50.44.050,~~  
12 ~~means a written, verbal, or implied agreement that the employee will~~  
13 ~~perform services in the same capacity during the ensuing academic~~  
14 ~~year or term as in the first academic year or term. A person shall~~  
15 ~~not be deemed to be performing services "in the same capacity" unless~~  
16 ~~those services are rendered under the same terms or conditions of~~  
17 ~~employment in the ensuing year as in the first academic year or term.~~

18 ~~(2) An individual who is tenured or holds tenure track status is~~  
19 ~~considered to have reasonable assurance, unless advised otherwise by~~  
20 ~~the college. For the purposes of this section, tenure track status~~  
21 ~~means a probationary faculty employee having an opportunity to be~~  
22 ~~reviewed for tenure.~~

23 ~~(3) In the case of community and technical colleges assigned the~~  
24 ~~standard industrial classification code 8222 or the North American~~  
25 ~~industry classification system code 611210 for services performed in~~  
26 ~~a principal administrative, research, or instructional capacity, a~~  
27 ~~person is presumed not to have reasonable assurance under an offer~~  
28 ~~that is conditioned on enrollment, funding, or program changes. It is~~  
29 ~~the college's burden to provide sufficient documentation to overcome~~  
30 ~~this presumption.)) following prerequisite requirements must be met~~  
31 ~~before making a determination about whether there is a "contract,"~~  
32 ~~under RCW 50.44.050, or "reasonable assurance," under RCW 50.44.050~~  
33 ~~and 50.44.055:~~

34 (a) The offer of employment may be written, verbal, or implied,  
35 and must be made by an individual with actual authority to offer  
36 employment;

37 (b) The offer of employment provides that the employee will  
38 perform services in the same capacity during the ensuing academic

1 year or term (or remainder of the current academic year or term) as  
2 in the first academic year or term; and

3 (c) The economic conditions of the offer of employment may not be  
4 considerably less in the following academic year or term (or portion  
5 thereof) than in the first academic year or term (or portion  
6 thereof). "Considerably less" includes the condition that the  
7 individual will not earn at least ninety percent of the wages earned  
8 in the prior academic year or term.

9 (2) If all prerequisite requirements in subsection (1) of this  
10 section are satisfied, the department must determine if a contract  
11 exists. If any prerequisite in subsection (1) of this section is not  
12 satisfied, the department cannot deny the claimant unemployment  
13 compensation based on the between and within term denial provisions.  
14 The term "contract," as that term is used in RCW 50.44.050, means an  
15 enforceable, noncontingent agreement that provides for compensation  
16 for an entire academic year or on an annual basis. If a contract  
17 exists, the claimant may be subject to a denial of benefits.

18 (3) If no contract exists, the department must determine if the  
19 claimant has "reasonable assurance." The following factors will be  
20 considered in determining if an individual has "reasonable  
21 assurance," as that term is used in RCW 50.44.050, 50.44.053, and  
22 50.44.055. For reasonable assurance to exist, each factor must be  
23 satisfied.

24 (a) If any contingencies in the employment offer are within the  
25 employer's control the claimant will not be considered to have  
26 reasonable assurance of employment. Contingencies within the  
27 employer's control include, but are not limited to:

- 28 (i) Course programming;
- 29 (ii) Funding allocation decisions;
- 30 (iii) Final course offerings; and
- 31 (iv) Facility availability.

32 (b) If contingencies are not within the employer's control, the  
33 department will determine whether it is highly probable the  
34 contingencies contained within the offer will be satisfied. Primary  
35 weight will be given to the contingent nature of an offer of  
36 employment.

37 (c) Reasonable assurance must be determined on a case-by-case  
38 basis (~~by the total weight of evidence~~) considering the totality of  
39 circumstances rather than on the existence of any one factor.  
40 (~~Primary weight must be given to the contingent nature of an offer~~

1 ~~of employment based on enrollment, funding, and program changes.))~~  
2 For an individual to have reasonable assurance of employment, the  
3 totality of the circumstances must show that it is highly probable  
4 that employment will be available in the next academic year or term,  
5 and that the contingencies of that employment will be satisfied.

6 (4) An individual who is tenured or holds tenure track status is  
7 considered to have reasonable assurance, unless advised otherwise by  
8 the college. For the purposes of this section, tenure track status  
9 means a probationary faculty employee having an opportunity to be  
10 reviewed for tenure.

11 **Sec. 3.** RCW 50.44.055 and 2001 c 99 s 1 are each amended to read  
12 as follows:

13 The legislature finds the interests of the state and its citizens  
14 are best served by a strong ~~((community and technical college))~~  
15 education system. ~~((As described by their establishing legislation,~~  
16 ~~these two-year institutions are an independent, unique, and vital~~  
17 ~~section of our state's higher education system, separate from both~~  
18 ~~the common school system and other institutions of higher~~  
19 ~~education.))~~ Paramount to that system's success is the attraction and  
20 retention of qualified instructors. In order to attract and retain  
21 instructors, those who are subject to uncertainties of employment  
22 must be provided assurance that their economic needs are addressed.  
23 ~~((Over time, a change in hiring patterns has occurred, and for the~~  
24 ~~last decade a substantial portion of community and technical college~~  
25 ~~faculty are hired on a contingent, as needed, basis. That contingent~~  
26 ~~nature distinguishes them from the more stable, majority employment~~  
27 ~~found in the common school system and in the other institutions of~~  
28 ~~higher education.))~~ Contingent assurances of future employment are  
29 often speculative and do not rise to the level of other forms of  
30 assurance. As such, ~~((assurances conditioned on forecast enrollment,~~  
31 ~~funding, or program decisions are typically not reasonable assurances~~  
32 ~~of employment))~~ the factors presented in RCW 50.44.053 must be used  
33 to determine if reasonable assurance of employment exists.

34 It is the intent of the legislature that reasonable assurance  
35 continue to apply to all employees of educational institutions as  
36 required by federal provisions and RCW 50.44.080.

37 NEW SECTION. **Sec. 4.** If any part of this act is found to be in  
38 conflict with federal requirements that are a prescribed condition to

1 the allocation of federal funds to the state or the eligibility of  
2 employers in this state for federal unemployment tax credits, the  
3 conflicting part of this act is inoperative solely to the extent of  
4 the conflict, and this finding or determination does not affect the  
5 operation of the remainder of this act. Rules adopted under this act  
6 must meet federal requirements that are a necessary condition to the  
7 receipt of federal funds by the state or the granting of federal  
8 unemployment tax credits to employers in this state.

9 NEW SECTION. **Sec. 5.** If any provision of this act or its  
10 application to any person or circumstance is held invalid, the  
11 remainder of the act or the application of the provision to other  
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 6.** This act applies to claimed weeks of  
14 unemployment on or after October 1, 2018.

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