
ENGROSSED SUBSTITUTE SENATE BILL 5373

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Labor, Commerce, Research & Development
(originally sponsored by Senators Kohl-Welles, Prentice, Keiser,
Franklin and Kline; by request of Employment Security Department)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to reporting, penalty, and corporate officer
2 provisions of the unemployment insurance system; amending RCW
3 50.12.070, 50.29.021, 50.12.220, 50.04.165, 50.04.310, 50.24.160,
4 50.20.070, 50.04.245, 50.24.170, 50.04.080, and 50.04.090; adding new
5 sections to chapter 50.04 RCW; adding new sections to chapter 50.12
6 RCW; adding a new section to chapter 50.29 RCW; adding new sections to
7 chapter 50.24 RCW; creating new sections; prescribing penalties; and
8 providing effective dates.

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

10 **Sec. 1.** RCW 50.12.070 and 1997 c 54 s 2 are each amended to read
11 as follows:

12 (1)(a) Each employing unit shall keep true and accurate work
13 records, containing such information as the commissioner may prescribe.
14 Such records shall be open to inspection and be subject to being copied
15 by the commissioner or his or her authorized representatives at any
16 reasonable time and as often as may be necessary. The commissioner may
17 require from any employing unit any sworn or unsworn reports with
18 respect to persons employed by it, which he or she deems necessary for
19 the effective administration of this title.

1 (b) An employer who contracts with another person or entity for
2 work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a
3 record of the unified business identifier account number for the person
4 or entity performing the work. Failure to obtain or maintain the
5 record is subject to RCW 39.06.010 and to a penalty determined by the
6 commissioner, but not to exceed two hundred fifty dollars, to be
7 collected as provided in RCW 50.24.120.

8 (2)(a) Each employer shall register with the department and obtain
9 an employment security account number. Registration must include the
10 names and social security numbers of the owners, partners, members, or
11 corporate officers of the business, as well as their mailing addresses
12 and telephone numbers and other information the commissioner may by
13 rule prescribe. Registration of corporations must also include the
14 percentage of stock ownership for each corporate officer, delineated by
15 zero percent, less than ten percent, or ten percent or more. Any
16 changes in the owners, partners, members, or corporate officers of the
17 business, and changes in percentage of ownership of the outstanding
18 shares of stock of the corporation, must be reported to the department
19 at intervals prescribed by the commissioner under (b) of this
20 subsection.

21 (b) Each employer shall make periodic reports at such intervals as
22 the commissioner may by regulation prescribe, setting forth the
23 remuneration paid for employment to workers in its employ, the full
24 names and social security numbers of all such workers, and ~~((until~~
25 ~~April 1, 1978, the number of weeks for which the worker earned the~~
26 ~~"qualifying weekly wage", and beginning July 1, 1977,))~~ the total hours
27 worked by each worker and such other information as the commissioner
28 may by regulation prescribe.

29 ~~((b))~~ (c) If the employing unit fails or has failed to report the
30 number of hours in a reporting period for which a worker worked, such
31 number will be computed by the commissioner and given the same force
32 and effect as if it had been reported by the employing unit. In
33 computing the number of such hours worked, the total wages for the
34 reporting period, as reported by the employing unit, shall be divided
35 by the dollar amount of the state's minimum wage in effect for such
36 reporting period and the quotient, disregarding any remainder, shall be
37 credited to the worker: PROVIDED, That although the computation so
38 made will not be subject to appeal by the employing unit, monetary

1 entitlement may be redetermined upon request if the department is
2 provided with credible evidence of the actual hours worked. Benefits
3 paid using computed hours are not considered an overpayment and are not
4 subject to collections when the correction of computed hours results in
5 an invalid or reduced claim; however:

6 (i) A contribution paying employer who fails to report the number
7 of hours worked will have its experience rating account charged for all
8 benefits paid that are based on hours computed under this subsection;
9 and

10 (ii) An employer who reimburses the trust fund for benefits paid to
11 workers and fails to report the number of hours worked shall reimburse
12 the trust fund for all benefits paid that are based on hours computed
13 under this subsection.

14 **Sec. 2.** RCW 50.29.021 and 2006 c 13 s 6 are each amended to read
15 as follows:

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

19 (2)(a) An experience rating account shall be established and
20 maintained for each employer, except employers as described in RCW
21 50.44.010 (~~and~~), 50.44.030, and 50.50.030 who have properly elected
22 to make payments in lieu of contributions, taxable local government
23 employers as described in RCW 50.44.035, and those employers who are
24 required to make payments in lieu of contributions, based on existing
25 records of the employment security department.

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

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

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

3 (ii) RCW 50.20.050(2)(b) (v) through (x).

4 (3) The legislature finds that certain benefit payments, in whole
5 or in part, should not be charged to the experience rating accounts of
6 employers except those employers described in RCW 50.44.010 (~~and~~),
7 50.44.030, and 50.50.030 who have properly elected to make payments in
8 lieu of contributions, taxable local government employers described in
9 RCW 50.44.035, and those employers who are required to make payments in
10 lieu of contributions, as follows:

11 (a) Benefits paid to any individual later determined to be
12 ineligible shall not be charged to the experience rating account of any
13 contribution paying employer. However, when a benefit claim becomes
14 invalid due to an amendment or adjustment of a report where the
15 employer failed to report or inaccurately reported hours worked or
16 remuneration paid, or both, all benefits paid will be charged to the
17 experience rating account of the contribution paying employer or
18 employers that originally filed the incomplete or inaccurate report or
19 reports. An employer who reimburses the trust fund for benefits paid
20 to workers and who fails to report or inaccurately reported hours
21 worked or remuneration paid, or both, shall reimburse the trust fund
22 for all benefits paid that are based on the originally filed incomplete
23 or inaccurate report or reports.

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

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

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

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

35 (d) In the case of individuals who requalify for benefits under RCW
36 50.20.050 or 50.20.060, benefits based on wage credits earned prior to
37 the disqualifying separation shall not be charged to the experience

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

3 (e) Individuals who qualify for benefits under RCW
4 50.20.050(2)(b)(iv), as applicable, shall not have their benefits
5 charged to the experience rating account of any contribution paying
6 employer.

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

13 (4)(a) A contribution paying base year employer, not otherwise
14 eligible for relief of charges for benefits under this section, may
15 receive such relief if the benefit charges result from payment to an
16 individual who:

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

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

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

27 (iv) Continues to be employed on a regularly scheduled permanent
28 part-time basis by a base year employer and who at some time during the
29 base year was concurrently employed and subsequently separated from at
30 least one other base year employer. Benefit charge relief ceases when
31 the employment relationship between the employer requesting relief and
32 the claimant is terminated. This subsection does not apply to shared
33 work employers under chapter 50.06 RCW.

34 (b) The employer requesting relief of charges under this subsection
35 must request relief in writing within thirty days following mailing to
36 the last known address of the notification of the valid initial
37 determination of such claim, stating the date and reason for the

1 separation or the circumstances of continued employment. The
2 commissioner, upon investigation of the request, shall determine
3 whether relief should be granted.

4 **Sec. 3.** RCW 50.12.220 and 2006 c 47 s 3 are each amended to read
5 as follows:

6 (1)~~((a))~~ If an employer fails to file ~~((in))~~ a timely ~~((and~~
7 ~~complete manner a))~~ report as required by RCW 50.12.070, or the rules
8 adopted pursuant thereto, the employer ~~((shall be))~~ is subject to a
9 penalty ~~((to be determined by the commissioner, but not to exceed two~~
10 ~~hundred fifty dollars or ten percent of the quarterly contributions for~~
11 ~~each such offense, whichever is less))~~ of twenty-five dollars per
12 violation, unless the penalty is waived by the commissioner.

13 ~~((b))~~ (2) An employer who files an incomplete or incorrectly
14 formatted tax and wage report as required by RCW 50.12.070 must receive
15 a warning letter for the first occurrence. The warning letter will
16 provide instructions for accurate reporting or notify the employer how
17 to obtain technical assistance from the department. Except as provided
18 in subsections (3) and (4) of this section, for subsequent occurrences
19 within five years of the last occurrence, the employer is subject to a
20 penalty as follows:

21 (a) When no contributions are due: For the second occurrence, the
22 penalty is seventy-five dollars; for the third occurrence, the penalty
23 is one hundred fifty dollars; and for the fourth occurrence and for
24 each occurrence thereafter, the penalty is two hundred fifty dollars.

25 (b) When contributions are due: For the second occurrence, the
26 penalty is ten percent of the quarterly contributions due, but not less
27 than seventy-five dollars and not more than two hundred fifty dollars;
28 for the third occurrence, the penalty is ten percent of the quarterly
29 contributions due, but not less than one hundred fifty dollars and not
30 more than two hundred fifty dollars; and for the fourth occurrence and
31 each occurrence thereafter, the penalty is two hundred fifty dollars.

32 (3) If an employer knowingly misrepresents to the employment
33 security department the amount of his or her payroll upon which
34 contributions under this title are based, the employer shall be liable
35 to the state for up to ten times the amount of the difference in
36 contributions paid, if any, and the amount the employer should have

1 paid and for the reasonable expenses of auditing his or her books and
2 collecting such sums. Such liability may be enforced in the name of
3 the department.

4 ~~((+2))~~ (4) If contributions are not paid on the date on which they
5 are due and payable as prescribed by the commissioner, there shall be
6 assessed a penalty of five percent of the amount of the contributions
7 for the first month or part thereof of delinquency; there shall be
8 assessed a total penalty of ten percent of the amount of the
9 contributions for the second month or part thereof of delinquency; and
10 there shall be assessed a total penalty of twenty percent of the amount
11 of the contributions for the third month or part thereof of
12 delinquency. No penalty so added shall be less than ten dollars.
13 These penalties are in addition to the interest charges assessed under
14 RCW 50.24.040.

15 ~~((+3))~~ (5) Penalties shall not accrue on contributions from an
16 estate in the hands of a receiver, executor, administrator, trustee in
17 bankruptcy, common law assignee, or other liquidating officer
18 subsequent to the date when such receiver, executor, administrator,
19 trustee in bankruptcy, common law assignee, or other liquidating
20 officer qualifies as such, but contributions accruing with respect to
21 employment of persons by a receiver, executor, administrator, trustee
22 in bankruptcy, common law assignee, or other liquidating officer shall
23 become due and shall be subject to penalties in the same manner as
24 contributions due from other employers.

25 ~~((+4))~~ (6) Where adequate information has been furnished to the
26 department and the department has failed to act or has advised the
27 employer of no liability or inability to decide the issue, penalties
28 shall be waived by the commissioner. Penalties may also be waived for
29 good cause if the commissioner determines that the failure to
30 ~~((timely))~~ file timely, complete, and correctly formatted reports or
31 pay timely contributions was not due to the employer's fault.

32 ~~((+5))~~ (7) Any decision to assess a penalty as provided by this
33 section shall be made by the chief administrative officer of the tax
34 branch or his or her designee.

35 ~~((+6))~~ (8) Nothing in this section shall be construed to deny an
36 employer the right to appeal the assessment of any penalty. Such
37 appeal shall be made in the manner provided in RCW 50.32.030.

1 **Sec. 4.** RCW 50.04.165 and 1993 c 290 s 2 are each amended to read
2 as follows:

3 (1)(a) Services performed by a person appointed as an officer of a
4 corporation under RCW 23B.08.400(, other than those covered by chapter
5 50.44 RCW, shall not be)) are considered services in employment.
6 However, a corporation, other than those covered by chapters 50.44 and
7 50.50 RCW, may elect to ((cover not less than all of its corporate
8 officers under RCW 50.24.160. If an employer does not elect to cover
9 its corporate officers under RCW 50.24.160, the employer must notify
10 its corporate officers in writing that they are ineligible for
11 unemployment benefits. If the employer fails to notify any corporate
12 officer, then that person shall not be considered to be a corporate
13 officer for the purposes of this section.)) exempt from coverage under
14 this title as provided in subsection (2) of this section, any bona fide
15 officer of a public company as defined in RCW 23B.01.400 who:

16 (i) Is voluntarily elected or voluntarily appointed in accordance
17 with the articles of incorporation or bylaws of the corporation;

18 (ii) Is a shareholder of the corporation;

19 (iii) Exercises substantial control in the daily management of the
20 corporation; and

21 (iv) Whose primary responsibilities do not include the performance
22 of manual labor.

23 (b) A corporation, other than those covered by chapters 50.44 and
24 50.50 RCW, that is not a public company as defined in RCW 23B.01.400
25 may exempt from coverage under this title as provided in subsection (2)
26 of this section:

27 (i) Eight or fewer bona fide officers who: Voluntarily agree to be
28 exempted from coverage; are voluntarily elected or voluntarily
29 appointed in accordance with the articles of incorporation or bylaws of
30 the corporation; and who exercise substantial control in the daily
31 management of the corporation, from coverage under this title without
32 regard to the officers' performance of manual labor if the exempted
33 officer is a shareholder of the corporation; and

34 (ii) Any number of officers if all the exempted officers are
35 related by blood within the third degree or marriage.

36 (c) Determinations with respect to the status of persons performing
37 services for a corporation must be made, in part, by reference to Title
38 23B RCW and to compliance by the corporation with its own articles of

1 incorporation and bylaws. For the purpose of determining coverage
2 under this title, substance controls over form, and mandatory coverage
3 under this title extends to all workers of this state, regardless of
4 honorary titles conferred upon those actually serving as workers.

5 (2)(a) The corporation must notify the department when it elects to
6 exempt one or more corporate officers from coverage. The notice must
7 be in a format prescribed by the department and signed by the officer
8 or officers being exempted and by another corporate officer verifying
9 the decision to be exempt from coverage.

10 (b) The election to exempt one or more corporate officers from
11 coverage under this title may be made when the corporation registers as
12 required under RCW 50.12.070. The corporation may also elect exemption
13 at any time following registration; however, an exemption will be
14 effective only as of the first day of a calendar year. A written
15 notice from the corporation must be sent to the department by January
16 15th following the end of the last calendar year of coverage.
17 Exemption from coverage will not be retroactive, and the corporation is
18 not eligible for a refund or credit for contributions paid for
19 corporate officers for periods before the effective date of the
20 exemption.

21 (3) A corporation may elect to reinstate coverage for one or more
22 officers previously exempted under this section, subject to the
23 following:

24 (a) Coverage may be reinstated only at set intervals of five years
25 beginning with the calendar year that begins five years after the
26 effective date of this section.

27 (b) Coverage may only be reinstated effective the first day of the
28 calendar year. A written notice from the corporation must be sent to
29 the department by January 15th following the end of the last calendar
30 year the exemption from coverage will apply.

31 (c) Coverage will not be reinstated if the corporation: Has
32 committed fraud related to the payment of contributions within the
33 previous five years; is delinquent in the payment of contributions; or
34 is assigned the array calculation factor rate for nonqualified
35 employers because of a failure to pay contributions when due as
36 provided in RCW 50.29.025, or for related reasons as determined by the
37 commissioner.

38 (d) Coverage will not be reinstated retroactively.

1 (4) Except for corporations covered by chapters 50.44 and 50.50
2 RCW, personal services performed by bona fide corporate officers for
3 corporations described under RCW 50.04.080(3) and 50.04.090(2) are not
4 considered services in employment, unless the corporation registers
5 with the department as required in RCW 50.12.070 and elects to provide
6 coverage for its corporate officers under RCW 50.24.160.

7 **Sec. 5.** RCW 50.04.310 and 1984 c 134 s 1 are each amended to read
8 as follows:

9 (1) An individual (~~((shall be deemed to be))~~) is "unemployed" in any
10 week during which the individual performs no services and with respect
11 to which no remuneration is payable to the individual, or in any week
12 of less than full time work, if the remuneration payable to the
13 individual with respect to such week is less than one and one-third
14 times the individual's weekly benefit amount plus five dollars. The
15 commissioner shall prescribe regulations applicable to unemployed
16 individuals making such distinctions in the procedures as to such types
17 of unemployment as the commissioner deems necessary.

18 (2) An individual (~~((shall be deemed))~~) is not (~~((to be))~~) "unemployed"
19 during any week which falls totally within a period during which the
20 individual, pursuant to a collective bargaining agreement or individual
21 employment contract, is employed full time in accordance with a
22 definition of full time contained in the agreement or contract, and for
23 which compensation for full time work is payable. This subsection may
24 not be applied retroactively to an individual who had no guarantee of
25 work at the start of such period and subsequently is provided
26 additional work by the employer.

27 (3) An officer of a corporation who owns ten percent or more of the
28 outstanding stock of the corporation, or a corporate officer who is a
29 family member of an officer who owns ten percent or more of the
30 outstanding stock of the corporation, whose claim for benefits is based
31 on any wages with that corporation, is:

32 (a) Not "unemployed" in any week during the individual's term of
33 office or ownership in the corporation, even if wages are not being
34 paid;

35 (b) "Unemployed" in any week upon dissolution of the corporation or
36 if the officer permanently resigns or is permanently removed from their

1 appointment and responsibilities with that corporation in accordance
2 with its articles of incorporation or bylaws.

3 As used in this section, "family member" means persons who are
4 members of a family by blood or marriage as parents, stepparents,
5 grandparents, spouses, children, brothers, sisters, stepchildren,
6 adopted children, or grandchildren.

7 **Sec. 6.** RCW 50.24.160 and 1977 ex.s. c 292 s 12 are each amended
8 to read as follows:

9 Except as provided in RCW 50.04.165, any employing unit ((for which
10 services that do not constitute employment as defined in this title are
11 performed may file with the commissioner a written election that all
12 such services performed by any distinct class or group of individuals
13 or by all individuals in its employ in one or more distinct
14 establishments or places of business shall be deemed to constitute
15 employment for all the purposes of this title for not less than two
16 calendar years. Upon the written approval of such election by the
17 commissioner, such services shall be deemed to constitute employment
18 subject to this title from and after the date stated in such approval.
19 Services covered pursuant to this section shall cease to be deemed
20 employment subject hereto as of January 1st of any calendar year
21 subsequent to such two calendar years, only if the employing unit files
22 with the commissioner prior to the fifteenth day of January of such
23 year a written application for termination of coverage)) for which
24 services that do not constitute employment as defined in this title are
25 performed may file with the commissioner a written election that all
26 such services performed by any distinct class or group of individuals
27 or by all individuals in its employment in one or more distinct
28 establishments or places of business shall be deemed to constitute
29 employment for all the purposes of this title for at least two calendar
30 years. Upon the written approval of such election by the commissioner,
31 such services shall be deemed to constitute employment subject to this
32 title on and after the date stated in the approval. Services covered
33 under this section shall cease to be deemed employment as of January
34 1st of any calendar year subsequent to the two-calendar year period,
35 only if the employing unit files with the commissioner before January
36 15th of that year a written application for termination of coverage.

1 **Sec. 7.** RCW 50.20.070 and 1973 1st ex.s. c 158 s 5 are each
2 amended to read as follows:

3 (~~Irrespective of any other provisions of this title~~) (1) With
4 respect to determinations delivered or mailed before January 1, 2008,
5 an individual (~~shall be~~) is disqualified for benefits for any week
6 (~~with respect to which~~) he or she has knowingly made a false
7 statement or representation involving a material fact or knowingly
8 failed to report a material fact and (~~has thereby~~), as a result, has
9 obtained or attempted to obtain any benefits under the provisions of
10 this title, and for an additional twenty-six weeks (~~commencing~~)
11 beginning with the first week for which he or she completes an
12 otherwise compensable claim for waiting period credit or benefits
13 following the date of the delivery or mailing of the determination of
14 disqualification under this section(~~:- PROVIDED, That~~). However,
15 such disqualification shall not be applied after two years have elapsed
16 from the date of the delivery or mailing of the determination of
17 disqualification under this section(~~, but~~).

18 (2) With respect to determinations delivered or mailed on or after
19 January 1, 2008:

20 (a) An individual is disqualified for benefits for any week he or
21 she has knowingly made a false statement or representation involving a
22 material fact or knowingly failed to report a material fact and, as a
23 result, has obtained or attempted to obtain any benefits under the
24 provisions of this title;

25 (b) An individual disqualified for benefits under this subsection
26 for the first time is also disqualified for an additional twenty-six
27 weeks beginning with the Sunday of the week in which the determination
28 is mailed or delivered;

29 (c) An individual disqualified for benefits under this subsection
30 for the second time is also disqualified for an additional fifty-two
31 weeks beginning with the Sunday of the week in which the determination
32 is mailed or delivered, and is subject to an additional penalty of
33 twenty-five percent of the amount of benefits overpaid or deemed
34 overpaid;

35 (d) An individual disqualified for benefits under this subsection
36 a third time and any time thereafter is also disqualified for an
37 additional one hundred four weeks beginning with the Sunday of the week

1 in which the determination is mailed or delivered, and is subject to an
2 additional penalty of fifty percent of the amount of benefits overpaid
3 or deemed overpaid.

4 (3) All penalties collected under this section must be expended for
5 the proper administration of this title as authorized under RCW
6 50.16.010 and for no other purposes.

7 (4) All overpayments and penalties established by such
8 determination of disqualification (~~shall~~) must be collected as
9 otherwise provided by this title.

10 NEW SECTION. Sec. 8. A new section is added to chapter 50.04 RCW
11 to read as follows:

12 For the purposes of this title:

13 (1) "Professional employer organization" means a person or entity
14 that enters into an agreement with one or more client employers to
15 provide professional employer services. "Professional employer
16 organization" includes entities that use the term "staff leasing
17 company," "permanent leasing company," "registered staff leasing
18 company," "employee leasing company," "administrative employer," or any
19 other name, when they provide professional employer services to client
20 employers. The following are not classified as professional employer
21 organizations: Independent contractors in RCW 50.04.140; temporary
22 staffing services companies and services referral agencies as defined
23 in RCW 50.04.245; third-party payers as defined in section 15 of this
24 act; or labor organizations.

25 (2) "Client employer" means any employer who enters into a
26 professional employer agreement with a professional employer
27 organization.

28 (3) "Coemployer" means either a professional employer organization
29 or a client employer that has entered into a professional employer
30 agreement.

31 (4) "Covered employee" means an individual performing services for
32 a client employer that constitutes employment under this title.

33 (5) "Professional employer services" means services provided by the
34 professional employer organization to the client employer, which
35 include, but are not limited to, human resource functions, risk
36 management, or payroll administration services, in a coemployment
37 relationship.

1 (6) "Coemployment relationship" means a relationship that is
2 intended to be ongoing rather than temporary or project-specific, where
3 the rights, duties, and obligations of an employer in an employment
4 relationship are allocated between coemployers pursuant to a
5 professional employer agreement and state law. A coemployment
6 relationship exists only if a majority of the employees performing
7 services to a client employer, or to a division or work unit of a
8 client employer, are covered employees. In determining the allocation
9 of rights and obligations in a coemployment relationship:

10 (a) The professional employer organization has only those employer
11 rights and is subject only to those obligations specifically allocated
12 to it by the professional employer agreement or state law;

13 (b) The client employer has those rights and obligations allocated
14 to it by the professional employer agreement or state law, as well as
15 any other right or obligation of an employer that is not specifically
16 allocated by the professional employer agreement or state law.

17 (7) "Professional employer agreement" means a written contract
18 between a client employer and a professional employer organization that
19 provides for: (a) The coemployment of covered employees; and (b) the
20 allocation of employer rights and obligations between the client and
21 the professional employer organization with respect to the covered
22 employees.

23 NEW SECTION. **Sec. 9.** A new section is added to chapter 50.12 RCW
24 to read as follows:

25 (1) A professional employer organization must register with the
26 department and ensure that its client employers are registered with the
27 department as provided in RCW 50.12.070.

28 (2) By September 1, 2007, the professional employer organization
29 shall provide the department with:

30 (a) The names, addresses, unified business identifier numbers, and
31 employment security account numbers of all its existing client
32 employers who do business or have covered employees in Washington
33 state. This requirement applies whether or not the client employer
34 currently has covered employees performing services in Washington
35 state;

36 (b) The names and social security numbers of corporate officers,
37 owners, or limited liability company members of client employers; and

1 (c) The business location in Washington state where payroll records
2 of its client employers will be made available for review or inspection
3 upon request of the department.

4 (3) For client employers registering for the first time as required
5 in RCW 50.12.070, the professional employer organization must:

6 (a) Provide the names, addresses, unified business identifier
7 numbers, and employment security account numbers of the client
8 employers who do business or have covered employees in Washington
9 state. This requirement applies whether or not the client employer
10 currently has covered employees performing services in Washington
11 state;

12 (b) Provide the names and social security numbers of corporate
13 officers, owners, or limited liability company members of the client
14 employers; and

15 (c) Provide the business location in Washington state where payroll
16 records of its client employers will be made available for review or
17 inspection at the time of registration or upon request of the
18 department.

19 (4) The professional employer organization must notify the
20 department within thirty days each time it adds or terminates a
21 relationship with a client employer. Notification must take place on
22 forms provided by the department. The notification must include the
23 name, employment security account number, unified business identifier
24 number, and address of the client employer, as well as the effective
25 date the relationship began or terminated.

26 (5) The professional employer organization must provide a power of
27 attorney, confidential information authorization, or other evidence,
28 completed by each client employer as required by the department,
29 authorizing it to act on behalf of the client employer for unemployment
30 insurance purposes.

31 (6) The professional employer organization must file quarterly wage
32 and contribution reports with the department. The professional
33 employer organization may file either a single electronic report
34 containing separate and distinct information for each client employer
35 and using the employer account number and tax rate assigned to each
36 client employer by the department, or separate paper reports for each
37 client employer.

1 (7) The professional employer organization must maintain accurate
2 payroll records for each client employer and make these records
3 available for review or inspection upon request of the department at
4 the location provided by the professional employer organization.

5 NEW SECTION. **Sec. 10.** A new section is added to chapter 50.29 RCW
6 to read as follows:

7 For purposes of this title, each client employer of a professional
8 employer organization is assigned its individual contribution rate
9 based on its own experience.

10 NEW SECTION. **Sec. 11.** A new section is added to chapter 50.24 RCW
11 to read as follows:

12 (1) The client employer of a professional employer organization is
13 liable for the payment of any taxes, interest, or penalties due.

14 (2) The professional employer organization may collect and pay
15 taxes due to the department for unemployment insurance coverage from
16 its client employers in accordance with its professional employer
17 agreement. If such payments have been made to the professional
18 employer organization by the client employer, the department shall
19 first attempt to collect the contributions due from the professional
20 employer organization.

21 (3) To collect any contributions, penalties, or interest due to the
22 department from the professional employer organization, the department
23 must follow the procedures contained in chapter 50.24 RCW. If the
24 amount of contributions, interest, or penalties assessed by the
25 commissioner pursuant to chapter 50.24 RCW is not paid by the
26 professional employer organization within ten days, then the
27 commissioner may follow the collection procedures in chapter 50.24 RCW.
28 After the ten-day period, if the professional employer organization has
29 not paid the total amount owing, the commissioner may also pursue the
30 client employer to collect what is owed using the procedures contained
31 in chapter 50.24 RCW.

32 NEW SECTION. **Sec. 12.** A new section is added to chapter 50.12 RCW
33 to read as follows:

34 A professional employer organization's authority to act as a
35 coemployer for purposes of this title may be revoked by the department

1 when it determines that the professional employer organization has
2 substantially failed to comply with the requirements of section 9 of
3 this act.

4 NEW SECTION. **Sec. 13.** The department shall report on the
5 implementation of sections 8 through 12 of this act and its impacts on
6 professional employer organizations, small businesses, and the
7 integrity and operations of the unemployment insurance system operated
8 under Title 50 RCW. The department shall report to the unemployment
9 insurance advisory committee and to the appropriate committees of the
10 legislature no later than December 1, 2010.

11 **Sec. 14.** RCW 50.04.245 and 1995 c 120 s 1 are each amended to read
12 as follows:

13 (1) Subject to the other provisions of this title, personal
14 services performed for, or for the benefit of, a third party pursuant
15 to a contract with a temporary staffing services (~~(agency, employee~~
16 ~~leasing agency,)) company or services referral agency(~~(, or other~~
17 ~~entity shall be deemed to be)) constitutes employment for the temporary
18 staffing services (~~(agency, employee leasing agency,)) company or~~
19 ~~services referral agency((, or other entity))~~ when the agency is
20 responsible, under contract or in fact, for the payment of wages in
21 remuneration for the services performed.~~~~

22 (2) The temporary staffing services company or services referral
23 agency is considered the employer as defined in RCW 50.04.080.

24 (3) For the purposes of this section:

25 (a) "Temporary staffing services (~~(agency))~~ company" means an
26 individual or entity (~~(that is engaged in the business of furnishing~~
27 ~~individuals to perform services on a part time or temporary basis for~~
28 ~~a third party)) that engages in: Recruiting and hiring its own~~
29 employees; finding other organizations that need the services of those
30 employees; and assigning those employees on a temporary basis to
31 perform work at or services for a client to support or supplement the
32 client's work forces, or to provide assistance in special work
33 situations, such as employee absences, skill shortages, and seasonal
34 workloads, or to perform special assignments or projects, all under the
35 direction and supervision of the client. "Temporary staffing services

1 company" does not include professional employer organizations as
2 defined in section 8 of this act, permanent employee leasing, or
3 permanent employee placement services.

4 (~~b~~) (~~"Employee leasing agency" means an individual or entity that~~
5 ~~for a fee places the employees of a client onto its payroll and leases~~
6 ~~such employees back to the client.~~

7 (~~e~~) "Services referral agency" means an individual or entity
8 other than a professional employer organization as defined in section
9 8 of this act that is engaged in the business of offering the services
10 of (~~an~~) one or more individuals to perform specific tasks for a third
11 party.

12 NEW SECTION. Sec. 15. A new section is added to chapter 50.04 RCW
13 to read as follows:

14 (1) Subject to the other provisions of this title, personal
15 services performed for, or for the benefit of, an employer who utilizes
16 a third-party payer constitutes employment for the employer. The
17 third-party payer is not considered the employer as defined in RCW
18 50.04.080.

19 (2) For purposes of this section, "third-party payer" means an
20 individual or entity that enters into an agreement with one or more
21 employers to provide administrative, human resource, or payroll
22 administration services, but does not provide an employment or
23 coemployment relationship. Temporary staffing services companies,
24 services referral agencies, professional employer organizations, and
25 labor organizations are not third-party payers.

26 NEW SECTION. Sec. 16. A new section is added to chapter 50.04 RCW
27 to read as follows:

28 (1) For purposes of this title, "common paymaster" or "common pay
29 agent" means an independent third party who contracts with, and
30 represents, two or more employers, and who files a combined tax report
31 for those employers.

32 (2) Common paymaster combined tax reporting is prohibited. "Common
33 paymaster" does not meet the definition of a joint account under RCW
34 50.24.170.

35 (3) A common pay agent or common paymaster is not an employer as

1 defined in RCW 50.04.080 or an employing unit as defined in RCW
2 50.04.090.

3 **Sec. 17.** RCW 50.24.170 and 1945 c 35 s 105 are each amended to
4 read as follows:

5 (1) The commissioner shall prescribe regulations for the
6 establishment, maintenance, and dissolution of joint accounts by two or
7 more employers, and shall, in accordance with such regulations and upon
8 application by two or more employers to establish such account, or to
9 merge their several individual accounts in a joint account, maintain
10 such joint account as if it constituted a single employer's account.

11 (2) Joint accounts may not be established for professional employer
12 organizations, as defined in section 8 of this act, or third-party
13 payers, as defined in section 15 of this act, and their clients.

14 **NEW SECTION. Sec. 18.** A new section is added to chapter 50.24 RCW
15 to read as follows:

16 (1) Upon termination, dissolution, or abandonment of a corporate or
17 limited liability company business, any officer, member, or owner who,
18 having control or supervision of payment of unemployment tax
19 contributions under RCW 50.24.010 or 50.24.014: (a) Willfully evades
20 any contributions imposed under this title; (b) willfully destroys,
21 mutilates, or falsifies any book, document, or record; or (c) willfully
22 fails to truthfully account for, or makes under oath, any false
23 statement relating to the financial condition of the corporation or
24 limited liability company business, is personally liable for any unpaid
25 contributions and interest and penalties on those contributions. For
26 purposes of this section, "willfully" means an intentional, conscious,
27 and voluntary course of action.

28 (2) Persons liable under subsection (1) of this section are liable
29 only for contributions that became due during the period he or she had
30 the control, supervision, responsibility, or duty to act for the
31 corporation or limited liability company, plus interest and penalties
32 on those contributions.

33 (3) Persons liable under subsection (1) of this section are exempt
34 from liability if all of the assets of the corporation or limited
35 liability company have been applied to its debts through bankruptcy or
36 receivership.

1 (4) Any person having been issued a notice of assessment under this
2 section is entitled to the appeal procedures under chapter 50.32 RCW.

3 (5) This section applies only when the employment security
4 department determines that there is no reasonable means of collecting
5 the contributions owed directly from the corporation or limited
6 liability company.

7 (6) This section does not relieve the corporation or limited
8 liability company of other tax liabilities under this title or impair
9 other tax collection remedies afforded by law.

10 (7) Collection authority and procedures described in this chapter
11 apply to collections under this section.

12 **Sec. 19.** RCW 50.04.080 and 1985 c 41 s 1 are each amended to read
13 as follows:

14 (1) "Employer" means any individual or type of organization,
15 including any partnership, association, trust, estate, joint stock
16 company, insurance company, limited liability company, or corporation,
17 whether domestic or foreign, or the receiver, trustee in bankruptcy,
18 trustee, or the legal representative of a deceased person, having any
19 person in employment or, having become an employer, has not ceased to
20 be an employer as provided in this title.

21 (2) For the purposes of collection remedies available under chapter
22 50.24 RCW, "employer," in the case of a corporation or limited
23 liability company, includes persons found personally liable for any
24 unpaid contributions and interest and penalties on those contributions
25 under section 18 of this act.

26 (3) Except for corporations covered by chapters 50.44 and 50.50
27 RCW, "employer" does not include a corporation when all personal
28 services are performed only by bona fide corporate officers, unless the
29 corporation registers with the department as required in RCW 50.12.070
30 and elects to provide coverage for its corporate officers under RCW
31 50.24.160.

32 **Sec. 20.** RCW 50.04.090 and 2001 1st sp.s. c 11 s 1 are each
33 amended to read as follows:

34 (1) "Employing unit" means any individual or any type of
35 organization, including any partnership, association, trust, estate,
36 joint stock company, insurance company, or corporation, whether

1 domestic or foreign, or the receiver, trustee in bankruptcy, trustee or
2 successor thereof, or the legal representative of a deceased person,
3 which has or subsequent to January 1, 1937, had in its employ or in its
4 "employment" one or more individuals performing services within this
5 state. The state and its political subdivisions shall be deemed
6 employing units as to any transactions occurring on or after September
7 21, 1977 which would render an employing unit liable for contributions,
8 interest, or penalties under RCW 50.24.130. "Employing unit" includes
9 Indian tribes as defined in RCW 50.50.010.

10 (2) Except for corporations covered by chapters 50.44 and 50.50
11 RCW, "employing unit" does not include a corporation when all personal
12 services are performed only by bona fide corporate officers, unless the
13 corporation registers with the department as required in RCW 50.12.070
14 and elects to provide coverage for its corporate officers under RCW
15 50.24.160.

16 NEW SECTION. Sec. 21. If any part of this act is found to be in
17 conflict with federal requirements that are a prescribed condition to
18 the allocation of federal funds to the state or the eligibility of
19 employers in this state for federal unemployment tax credits, the
20 conflicting part of this act is inoperative solely to the extent of the
21 conflict, and the finding or determination does not affect the
22 operation of the remainder of this act. Rules adopted under this act
23 must meet federal requirements that are a necessary condition to the
24 receipt of federal funds by the state or the granting of federal
25 unemployment tax credits to employers in this state.

26 NEW SECTION. Sec. 22. If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. Sec. 23. Section 3 of this act applies for penalties
31 assessed on reports and contributions due beginning October 1, 2007.

32 NEW SECTION. Sec. 24. Section 4 of this act takes effect January
33 1, 2009.

1 NEW SECTION. **Sec. 25.** Sections 5, 6, and 10 through 12 of this
2 act take effect January 1, 2008.

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