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SENATE BILL 5373

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Kohl-Welles, Prentice, Keiser, Franklin and Kline; by request of Employment Security Department

Read first time 01/18/2007. Referred to Committee on Labor, Commerce, Research & Development.

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, 50.12.070,  
4 50.20.070, 50.04.245, 50.24.170, and 50.04.080; adding a new section to  
5 chapter 50.12 RCW; adding new sections to chapter 50.04 RCW; adding a  
6 new section to chapter 50.24 RCW; creating new sections; prescribing  
7 penalties; and providing an effective date.

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

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

11            (1)(a) Each employing unit shall keep true and accurate work  
12 records, containing such information as the commissioner may prescribe.  
13 Such records shall be open to inspection and be subject to being copied  
14 by the commissioner or his or her authorized representatives at any  
15 reasonable time and as often as may be necessary. The commissioner may  
16 require from any employing unit any sworn or unsworn reports with  
17 respect to persons employed by it, which he or she deems necessary for  
18 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 make periodic reports at such intervals  
9 as the commissioner may by regulation prescribe, setting forth the  
10 remuneration paid for employment to workers in its employ, the full  
11 names and social security numbers of all such workers, and ((~~until~~  
12 ~~April 1, 1978, the number of weeks for which the worker earned the~~  
13 ~~"qualifying weekly wage", and beginning July 1, 1977,~~) the total hours  
14 worked by each worker and such other information as the commissioner  
15 may by regulation prescribe.

16 (b) If the employing unit fails or has failed to report the number  
17 of hours in a reporting period for which a worker worked, such number  
18 will be computed by the commissioner and given the same force and  
19 effect as if it had been reported by the employing unit. In computing  
20 the number of such hours worked, the total wages for the reporting  
21 period, as reported by the employing unit, shall be divided by the  
22 dollar amount of the state's minimum wage in effect for such reporting  
23 period and the quotient, disregarding any remainder, shall be credited  
24 to the worker: PROVIDED, That although the computation so made will  
25 not be subject to appeal by the employing unit, monetary entitlement  
26 may be redetermined upon request if the department is provided with  
27 credible evidence of the actual hours worked. Benefits paid using  
28 computed hours are not considered an overpayment and are not subject to  
29 collections when the correction of computed hours results in an invalid  
30 or reduced claim; however:

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

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

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

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

6       (2)(a) An experience rating account shall be established and  
7 maintained for each employer, except employers as described in RCW  
8 50.44.010 and 50.44.030 who have properly elected to make payments in  
9 lieu of contributions, taxable local government employers as described  
10 in RCW 50.44.035, and those employers who are required to make payments  
11 in lieu of contributions, based on existing records of the employment  
12 security department.

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

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

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

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

27       (3) The legislature finds that certain benefit payments, in whole  
28 or in part, should not be charged to the experience rating accounts of  
29 employers except those employers described in RCW 50.44.010 and  
30 50.44.030 who have properly elected to make payments in lieu of  
31 contributions, taxable local government employers described in RCW  
32 50.44.035, and those employers who are required to make payments in  
33 lieu of contributions, as follows:

34       (a) Benefits paid to any individual later determined to be  
35 ineligible shall not be charged to the experience rating account of any  
36 contribution paying employer. However, when a benefit claim becomes  
37 invalid due to an amendment or adjustment of a report where the  
38 employer failed to report or inaccurately reported hours worked or

1 remuneration paid, or both, all benefits paid will be charged to the  
2 experience rating account of the contribution paying employer or  
3 employers that originally filed the incomplete or inaccurate report or  
4 reports. An employer who reimburses the trust fund for benefits paid  
5 to workers and who fails to report or inaccurately reported hours  
6 worked or remuneration paid, or both, shall reimburse the trust fund  
7 for all benefits paid that are based on the originally filed incomplete  
8 or inaccurate report or reports.

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

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

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

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

20 (d) In the case of individuals who requalify for benefits under RCW  
21 50.20.050 or 50.20.060, benefits based on wage credits earned prior to  
22 the disqualifying separation shall not be charged to the experience  
23 rating account of the contribution paying employer from whom that  
24 separation took place.

25 (e) Individuals who qualify for benefits under RCW  
26 50.20.050(2)(b)(iv), as applicable, shall not have their benefits  
27 charged to the experience rating account of any contribution paying  
28 employer.

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

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

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

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

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

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

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

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

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

34 ~~((b))~~ (2) An employer who files an incomplete or incorrectly  
35 formatted tax and wage report as required by RCW 50.12.070 must receive  
36 a warning letter for the first occurrence. Except as provided in

1 subsections (3) and (4) of this section, for subsequent occurrences,  
2 the employer is subject to a penalty as follows:

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

7 (b) When contributions are due: For the second occurrence, the  
8 penalty is ten percent of the quarterly contributions due, but not less  
9 than seventy-five dollars and not more than two hundred fifty dollars;  
10 for the third occurrence, the penalty is ten percent of the quarterly  
11 contributions due, but not less than one hundred fifty dollars and not  
12 more than two hundred fifty dollars; and for the fourth occurrence and  
13 each occurrence thereafter, the penalty is two hundred fifty dollars.

14 (3) If an employer knowingly misrepresents to the employment  
15 security department the amount of his or her payroll upon which  
16 contributions under this title are based, the employer shall be liable  
17 to the state for up to ten times the amount of the difference in  
18 contributions paid, if any, and the amount the employer should have  
19 paid and for the reasonable expenses of auditing his or her books and  
20 collecting such sums. Such liability may be enforced in the name of  
21 the department.

22 ~~((+2))~~ (4) If contributions are not paid on the date on which they  
23 are due and payable as prescribed by the commissioner, there shall be  
24 assessed a penalty of five percent of the amount of the contributions  
25 for the first month or part thereof of delinquency; there shall be  
26 assessed a total penalty of ten percent of the amount of the  
27 contributions for the second month or part thereof of delinquency; and  
28 there shall be assessed a total penalty of twenty percent of the amount  
29 of the contributions for the third month or part thereof of  
30 delinquency. No penalty so added shall be less than ten dollars.  
31 These penalties are in addition to the interest charges assessed under  
32 RCW 50.24.040.

33 ~~((+3))~~ (5) Penalties shall not accrue on contributions from an  
34 estate in the hands of a receiver, executor, administrator, trustee in  
35 bankruptcy, common law assignee, or other liquidating officer  
36 subsequent to the date when such receiver, executor, administrator,  
37 trustee in bankruptcy, common law assignee, or other liquidating  
38 officer qualifies as such, but contributions accruing with respect to

1 employment of persons by a receiver, executor, administrator, trustee  
2 in bankruptcy, common law assignee, or other liquidating officer shall  
3 become due and shall be subject to penalties in the same manner as  
4 contributions due from other employers.

5 ~~((+4))~~ (6) Where adequate information has been furnished to the  
6 department and the department has failed to act or has advised the  
7 employer of no liability or inability to decide the issue, penalties  
8 shall be waived by the commissioner. Penalties may also be waived for  
9 good cause if the commissioner determines that the failure to  
10 ~~((timely))~~ file timely, complete, and correctly formatted reports or  
11 pay timely contributions was not due to the employer's fault.

12 ~~((+5))~~ (7) Any decision to assess a penalty as provided by this  
13 section shall be made by the chief administrative officer of the tax  
14 branch or his or her designee.

15 ~~((+6))~~ (8) Nothing in this section shall be construed to deny an  
16 employer the right to appeal the assessment of any penalty. Such  
17 appeal shall be made in the manner provided in RCW 50.32.030.

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

20 Services performed by a person appointed as an officer of a  
21 corporation under RCW 23B.08.400(~~(, other than those covered by chapter~~  
22 ~~50.44 RCW, shall not be)) are considered services in employment.  
23 ~~((However, a corporation may elect to cover not less than all of its~~  
24 ~~corporate officers under RCW 50.24.160. If an employer does not elect~~  
25 ~~to cover its corporate officers under RCW 50.24.160, the employer must~~  
26 ~~notify its corporate officers in writing that they are ineligible for~~  
27 ~~unemployment benefits. If the employer fails to notify any corporate~~  
28 ~~officer, then that person shall not be considered to be a corporate~~  
29 ~~officer for the purposes of this section.))~~~~

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

32 (1) An individual (~~((shall be deemed to be))~~) is "unemployed" in any  
33 week during which the individual performs no services and with respect  
34 to which no remuneration is payable to the individual, or in any week  
35 of less than full time work, if the remuneration payable to the  
36 individual with respect to such week is less than one and one-third

1 times the individual's weekly benefit amount plus five dollars. The  
2 commissioner shall prescribe regulations applicable to unemployed  
3 individuals making such distinctions in the procedures as to such types  
4 of unemployment as the commissioner deems necessary.

5 (2) An individual (~~(shall be deemed)~~) is not (~~(to be)~~) "unemployed"  
6 during any week which falls totally within a period during which the  
7 individual, pursuant to a collective bargaining agreement or individual  
8 employment contract, is employed full time in accordance with a  
9 definition of full time contained in the agreement or contract, and for  
10 which compensation for full time work is payable. This subsection may  
11 not be applied retroactively to an individual who had no guarantee of  
12 work at the start of such period and subsequently is provided  
13 additional work by the employer.

14 (3) An officer of a corporation who has more than a five percent  
15 equity or debt interest in the corporation, whose claim for benefits is  
16 based on any wages with that corporation is:

17 (a) Not "unemployed" in any week during the individual's term of  
18 office or ownership in the corporation;

19 (b) "Unemployed" in any week upon dissolution of the corporation or  
20 if the officer permanently resigns or is permanently removed from their  
21 appointment and responsibilities with that corporation in accordance  
22 with its bylaws.

23 **Sec. 6.** RCW 50.12.070 and 1997 c 54 s 2 are each amended to read  
24 as follows:

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

33 (b) An employer who contracts with another person or entity for  
34 work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a  
35 record of the unified business identifier account number for the person  
36 or entity performing the work. Failure to obtain or maintain the

1 record is subject to RCW 39.06.010 and to a penalty determined by the  
2 commissioner, but not to exceed two hundred fifty dollars, to be  
3 collected as provided in RCW 50.24.120.

4 (2)(a) Each employer shall register with the department and obtain  
5 an employment security account number. Registration must include the  
6 names and social security numbers of the owners, partners, members, or  
7 corporate officers of the business, as well as their mailing addresses  
8 and telephone numbers and other information the commissioner may by  
9 regulation prescribe. Any changes of the owners, partners, members, or  
10 corporate officers of the business must be reported within thirty days  
11 to the department.

12 (b) Each employer shall make periodic reports at such intervals as  
13 the commissioner may by regulation prescribe, setting forth the  
14 remuneration paid for employment to workers in its employ, the names of  
15 all such workers, and until April 1, 1978, the number of weeks for  
16 which the worker earned the "qualifying weekly wage", and beginning  
17 July 1, 1977, the hours worked by each worker and such other  
18 information as the commissioner may by regulation prescribe.

19 ~~((b))~~ (c) If the employing unit fails or has failed to report the  
20 number of hours in a reporting period for which a worker worked, such  
21 number will be computed by the commissioner and given the same force  
22 and effect as if it had been reported by the employing unit. In  
23 computing the number of such hours worked the total wages for the  
24 reporting period, as reported by the employing unit, shall be divided  
25 by the dollar amount of the state's minimum wage in effect for such  
26 reporting period and the quotient, disregarding any remainder, shall be  
27 credited to the worker: PROVIDED, That although the computation so  
28 made will not be subject to appeal by the employing unit, monetary  
29 entitlement may be redetermined upon request if the department is  
30 provided with credible evidence of the actual hours worked.

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

33 ~~((Irrespective of any other provisions of this title))~~ (1) With  
34 respect to determinations delivered or mailed before January 1, 2008,  
35 an individual ~~((shall be))~~ is disqualified for benefits for any week  
36 ~~((with respect to which))~~ he or she has knowingly made a false  
37 statement or representation involving a material fact or knowingly

1 failed to report a material fact and (~~has thereby~~), as a result, has  
2 obtained or attempted to obtain any benefits under the provisions of  
3 this title, and for an additional twenty-six weeks (~~commencing~~)  
4 beginning with the first week for which he or she completes an  
5 otherwise compensable claim for waiting period credit or benefits  
6 following the date of the delivery or mailing of the determination of  
7 disqualification under this section(~~:- PROVIDED, That~~). However,  
8 such disqualification shall not be applied after two years have elapsed  
9 from the date of the delivery or mailing of the determination of  
10 disqualification under this section(~~, but~~).

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

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

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

22 (c) An individual disqualified for benefits under this subsection  
23 for the second time is also disqualified for an additional fifty-two  
24 weeks beginning with the Sunday of the week in which the determination  
25 is mailed or delivered, and is subject to an additional penalty of  
26 twenty-five percent of the amount of benefits overpaid or deemed  
27 overpaid;

28 (d) An individual disqualified for benefits under this subsection  
29 a third time and any time thereafter is also disqualified for an  
30 additional one hundred four weeks beginning with Sunday of the week in  
31 which the determination is mailed or delivered, and is subject to an  
32 additional penalty of fifty percent of the amount of benefits overpaid  
33 or deemed overpaid.

34 (3) All penalties collected under this section must be expended for  
35 the proper administration of this title as authorized under RCW  
36 50.16.010 and for no other purposes.

37 (4) All overpayments and penalties established by such

1 determination of disqualification ((shall)) must be collected as  
2 otherwise provided by this title.

3 NEW SECTION. Sec. 8. A new section is added to chapter 50.12 RCW  
4 to read as follows:

5 (1) Third party payers as defined in section 9 of this act may not  
6 establish joint accounts under RCW 50.24.170.

7 (2) A third party payer must:

8 (a) Register with the department as provided in RCW 50.12.070;

9 (b) Provide the department with the names, addresses, and  
10 employment security account numbers of its client companies employing  
11 Washington state employees at the time of registration and at other  
12 times when requested by the department, and provide the names and  
13 addresses of its client companies not employing Washington state  
14 employees at the time of registration and at other times when requested  
15 by the department;

16 (c) Notify the department within thirty days each time it adds or  
17 terminates a client company;

18 (d) Provide a power of attorney or confidential information  
19 authorization completed by the client company as required by the  
20 department for each client company, authorizing it to act on behalf of  
21 the client company for unemployment insurance purposes;

22 (e) File separate quarterly wage and contribution reports with the  
23 department for each client company, using the employer account number  
24 and experience rate assigned to each client company; and

25 (f) Maintain accurate payroll records for each client company and  
26 make these records available in Washington state for review or  
27 inspection upon request of the department.

28 NEW SECTION. Sec. 9. A new section is added to chapter 50.04 RCW  
29 to read as follows:

30 (1) Personal services performed for, or for the benefit of, a  
31 client under an agreement with a third party payer is employment for  
32 the client company. The client is considered both the employer as  
33 defined in RCW 50.04.080 and the employing unit as defined in RCW  
34 50.04.090.

35 (2) For the purposes of this section:

1 (a)(i) "Third party payer" means an individual or business entity  
2 that enters into an agreement with one or more clients to provide  
3 professional employer services, human resource functions, or other  
4 payroll administration services that may or may not establish a  
5 coemployment relationship. "Professional employer services" means the  
6 service of entering into a coemployment relationship in which at least  
7 a majority of the employees providing services to a client or to a  
8 division or work unit of a client are covered employment as defined in  
9 RCW 50.04.100. A "coemployment relationship" means an ongoing  
10 relationship where the rights, duties, and obligations of an employer  
11 in an employment relationship are allocated between coemployers under  
12 a professional employer agreement and state law. "Professional  
13 employer agreement" means a written contract between a client and a  
14 professional employer organization that provides for: (A) The  
15 coemployment of covered employees; and (B) the allocation of employer  
16 rights and obligations between the client and the professional employer  
17 organization with respect to the covered employees.

18 (ii) "Third party payer" includes entities defined in this  
19 subsection that use the title "professional employer organization,"  
20 "PEO," "staff leasing company," "registered staff leasing company,"  
21 "employee leasing company," "administrative employer," "employer  
22 representative," or any other name.

23 (iii) "Third party payer" does not include temporary staffing  
24 services companies or services referral agencies as defined in RCW  
25 50.04.245, or labor organizations.

26 (b) "Client" means an individual or entity that enters into a  
27 professional employer agreement with a third party payer for  
28 professional employer services, human resource functions, or other  
29 payroll administration services.

30 (3) A third party payer is not considered a successor employer  
31 under RCW 50.29.062. Each client retains its experience rate as  
32 determined by RCW 50.29.020 and 50.29.021. The experience rate of a  
33 third party payer is determined solely on its own unemployment  
34 experience with its own nonclient company employees.

35 **Sec. 10.** RCW 50.04.245 and 1995 c 120 s 1 are each amended to read  
36 as follows:

37 (1) Subject to the other provisions of this title, personal

1 services performed for, or for the benefit of, a third party pursuant  
2 to a contract with a temporary staffing services ((agency, employee  
3 leasing agency)) company, services referral agency, or other entity  
4 ((shall be deemed to be)) not defined as a third party payer in section  
5 9 of this act, constitutes employment for the temporary staffing  
6 services ((agency, employee leasing agency)) company, services referral  
7 agency, or other entity when the agency is responsible, under contract  
8 or in fact, for the payment of wages in remuneration for the services  
9 performed.

10 (2) The temporary staffing services company, services referral  
11 agency, or other such entity is considered an employer as defined in  
12 RCW 50.04.080.

13 (3) For the purposes of this section:

14 (a) "Temporary staffing services ((agency)) company" means an  
15 individual or entity ((that is engaged in the business of furnishing  
16 individuals to perform services on a part time or temporary basis for  
17 a third party)) other than a third party payer as defined in section 9  
18 of this act, that engages in: Recruiting and hiring its own employees;  
19 finding other organizations that need the services of those employees;  
20 and assigning those employees on a temporary basis to perform work at  
21 or services for a client to support or supplement the client's work  
22 forces, or to provide assistance in special work situations, such as  
23 employee absences, skill shortages, and seasonal workloads, or to  
24 perform special assignments or projects, all under the direction and  
25 supervision of the client. "Temporary staffing services" does not  
26 include permanent employee leasing or permanent employee placement  
27 services.

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

31 (c)) "Services referral agency" means an individual or entity  
32 other than a third party payer as defined in section 9 of this act that  
33 is engaged in the business of offering the services of an individual to  
34 perform specific tasks for a third party.

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

1 (1) A common pay agent or common paymaster is not an employer as  
2 defined in RCW 50.04.080 or an employing unit as defined in RCW  
3 50.04.090.

4 (2) For the purposes of this section:

5 (a) A common pay agent is an independent third party who contracts  
6 with and represents two or more employers and who files a combined tax  
7 report for those employers.

8 (b) A common paymaster is two or more employers in which one of the  
9 employers is designated to disburse wages to concurrently employed  
10 individuals of any of the related companies.

11 **Sec. 12.** RCW 50.24.170 and 1945 c 35 s 105 are each amended to  
12 read as follows:

13 (1) The commissioner shall prescribe regulations for the  
14 establishment, maintenance, and dissolution of joint accounts by two or  
15 more employers, and shall, in accordance with such regulations and upon  
16 application by two or more employers to establish such account, or to  
17 merge their several individual accounts in a joint account, maintain  
18 such joint account as if it constituted a single employer's account.

19 (2) Joint accounts may not be established for individuals or  
20 entities described under section 9 or 11 of this act.

21 NEW SECTION. **Sec. 13.** A new section is added to chapter 50.24 RCW  
22 to read as follows:

23 (1) Upon termination, dissolution, or abandonment of a corporate or  
24 limited liability company business, any officer, member, manager, or  
25 other person having control or supervision of payment of unemployment  
26 tax contributions under RCW 50.24.010 or 50.24.014, or who is  
27 responsible for the filing of reports or the payment of contributions  
28 or payments in lieu of contributions, is personally liable for any  
29 unpaid contributions and interest and penalties on those contributions  
30 if such officer or other person willfully fails to pay or to cause to  
31 be paid any contributions due to the department from the corporation or  
32 limited liability company business under this title. For purposes of  
33 this section, "willfully fails to pay or to cause to be paid" means  
34 that the failure is the result of an intentional, conscious, and  
35 voluntary course of action.

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

6 (3) Persons liable under subsection (1) of this section are exempt  
7 from liability if the nonpayment of contributions was beyond their  
8 control as determined by the employment security department by rule.  
9 In making this determination, the department shall consider, but not be  
10 limited to, such factors as the death, illness, or personal financial  
11 situation of the person liable under subsection (1) of this section.

12 (4) Persons liable under subsection (1) of this section are exempt  
13 from liability if all of the assets of the corporation or limited  
14 liability company have been applied to its debts through bankruptcy or  
15 receivership.

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

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

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

25 (8) Collection authority and procedures described in this chapter  
26 apply to collections under this section.

27 **Sec. 14.** RCW 50.04.080 and 1985 c 41 s 1 are each amended to read  
28 as follows:

29 "Employer" means any individual or type of organization, including  
30 any partnership, association, trust, estate, joint stock company,  
31 insurance company, limited liability company, or corporation, whether  
32 domestic or foreign, or the receiver, trustee in bankruptcy, trustee,  
33 or the legal representative of a deceased person, having any person in  
34 employment or, having become an employer, has not ceased to be an  
35 employer as provided in this title.

36 For the purposes of collection remedies available under chapter  
37 50.24 RCW, "employer," in the case of a corporation or limited

1 liability company, includes persons found personally liable for any  
2 unpaid contributions and interest and penalties on those contributions  
3 under section 13 of this act.

4 NEW SECTION. **Sec. 15.** If any part of this act is found to be in  
5 conflict with federal requirements that are a prescribed condition to  
6 the allocation of federal funds to the state or the eligibility of  
7 employers in this state for federal unemployment tax credits, the  
8 conflicting part of this act is inoperative solely to the extent of the  
9 conflict, and the finding or determination does not affect the  
10 operation of the remainder of this act. Rules adopted under this act  
11 must meet federal requirements that are a necessary condition to the  
12 receipt of federal funds by the state or the granting of federal  
13 unemployment tax credits to employers in this state.

14 NEW SECTION. **Sec. 16.** If any provision of this act or its  
15 application to any person or circumstance is held invalid, the  
16 remainder of the act or the application of the provision to other  
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 17.** Section 3 of this act applies for penalties  
19 assessed on reports and contributions due beginning October 1, 2007.

20 NEW SECTION. **Sec. 18.** Sections 1, 2, 4 through 6, and 8 through  
21 12 of this act take effect January 1, 2008.

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