

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5227

Chapter 250, Laws of 2013

63rd Legislature
2013 Regular Session

EMPLOYMENT SECURITY ACT--CORPORATE OFFICERS

EFFECTIVE DATE: 12/29/13

Passed by the Senate April 22, 2013
YEAS 43 NAYS 5

BRAD OWEN

President of the Senate

Passed by the House April 9, 2013
YEAS 94 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 15, 2013, 1:48 p.m.

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5227** as passed by the Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

May 16, 2013

JAY INSLEE

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5227

AS AMENDED BY THE HOUSE

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By Senate Commerce & Labor (originally sponsored by Senators Schoesler, Holmquist Newbry, Delvin, Hatfield, Shin, King, Hobbs, Sheldon, Padden, Honeyford, Dammeier, and Roach)

READ FIRST TIME 02/18/13.

1 AN ACT Relating to the corporate officer provisions of the
2 employment security act; amending RCW 50.12.070, 50.04.165, 50.04.080,
3 and 50.04.090; creating a new section; and providing an effective date.

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

5 **Sec. 1.** RCW 50.12.070 and 2009 c 432 s 11 are each amended to read
6 as follows:

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

15 (b) An employer who contracts with another person or entity for
16 work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a
17 record of the unified business identifier account number for and
18 compensation paid to the person or entity performing the work. In

1 addition to the penalty in subsection (3) of this section, failure to
2 obtain or maintain the record is subject to RCW 39.06.010.

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

16 ~~(b))~~ Each employer shall make periodic reports at such intervals
17 as the commissioner may by regulation prescribe, setting forth the
18 remuneration paid for employment to workers in its employ, the full
19 names and social security numbers of all such workers, and the total
20 hours worked by each worker and such other information as the
21 commissioner may by regulation prescribe.

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

37 (i) A contribution paying employer who fails to report the number

1 of hours worked will have its experience rating account charged for all
2 benefits paid that are based on hours computed under this subsection;
3 and

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

8 (3) Any employer who fails to keep and preserve records required by
9 this section shall be subject to a penalty determined by the
10 commissioner but not to exceed two hundred fifty dollars or two hundred
11 percent of the quarterly tax for each offense, whichever is greater.

12 **Sec. 2.** RCW 50.04.165 and 2007 c 146 s 4 are each amended to read
13 as follows:

14 ~~((1)(a))~~ Services performed by a person appointed as an officer
15 of a corporation under RCW 23B.08.400 ~~((are))~~, other than those covered
16 by chapters 50.44 and 50.50 RCW, shall not be considered services in
17 employment. However, a corporation ~~((other than those covered by~~
18 ~~chapters 50.44 and 50.50 RCW,))~~ may elect to ~~((exempt from coverage~~
19 ~~under this title as provided in subsection (2) of this section, any~~
20 ~~bona fide officer of a public company as defined in RCW 23B.01.400 who:~~

21 ~~(i) Is voluntarily elected or voluntarily appointed in accordance~~
22 ~~with the articles of incorporation or bylaws of the corporation;~~

23 ~~(ii) Is a shareholder of the corporation;~~

24 ~~(iii) Exercises substantial control in the daily management of the~~
25 ~~corporation; and~~

26 ~~(iv) Whose primary responsibilities do not include the performance~~
27 ~~of manual labor.~~

28 ~~(b) A corporation, other than those covered by chapters 50.44 and~~
29 ~~50.50 RCW, that is not a public company as defined in RCW 23B.01.400~~
30 ~~may exempt from coverage under this title as provided in subsection (2)~~
31 ~~of this section:~~

32 ~~(i) Eight or fewer bona fide officers who: Voluntarily agree to be~~
33 ~~exempted from coverage; are voluntarily elected or voluntarily~~
34 ~~appointed in accordance with the articles of incorporation or bylaws of~~
35 ~~the corporation; and who exercise substantial control in the daily~~
36 ~~management of the corporation, from coverage under this title without~~

1 ~~regard to the officers' performance of manual labor if the exempted~~
2 ~~officer is a shareholder of the corporation; and~~

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

5 ~~(c) Determinations with respect to the status of persons performing~~
6 ~~services for a corporation must be made, in part, by reference to Title~~
7 ~~23B RCW and to compliance by the corporation with its own articles of~~
8 ~~incorporation and bylaws. For the purpose of determining coverage~~
9 ~~under this title, substance controls over form, and mandatory coverage~~
10 ~~under this title extends to all workers of this state, regardless of~~
11 ~~honorary titles conferred upon those actually serving as workers.~~

12 ~~(2)(a) The corporation must notify the department when it elects to~~
13 ~~exempt one or more corporate officers from coverage. The notice must~~
14 ~~be in a format prescribed by the department and signed by the officer~~
15 ~~or officers being exempted and by another corporate officer verifying~~
16 ~~the decision to be exempt from coverage.~~

17 ~~(b) The election to exempt one or more corporate officers from~~
18 ~~coverage under this title may be made when the corporation registers as~~
19 ~~required under RCW 50.12.070. The corporation may also elect exemption~~
20 ~~at any time following registration; however, an exemption will be~~
21 ~~effective only as of the first day of a calendar year. A written~~
22 ~~notice from the corporation must be sent to the department by January~~
23 ~~15th following the end of the last calendar year of coverage.~~
24 ~~Exemption from coverage will not be retroactive, and the corporation is~~
25 ~~not eligible for a refund or credit for contributions paid for~~
26 ~~corporate officers for periods before the effective date of the~~
27 ~~exemption.~~

28 ~~(3) A corporation may elect to reinstate coverage for one or more~~
29 ~~officers previously exempted under this section, subject to the~~
30 ~~following:~~

31 ~~(a) Coverage may be reinstated only at set intervals of five years~~
32 ~~beginning with the calendar year that begins five years after January~~
33 ~~1, 2009.~~

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

1 ~~(c) Coverage will not be reinstated if the corporation: Has~~
2 ~~committed fraud related to the payment of contributions within the~~
3 ~~previous five years; is delinquent in the payment of contributions; or~~
4 ~~is assigned the array calculation factor rate for nonqualified~~
5 ~~employers because of a failure to pay contributions when due as~~
6 ~~provided in RCW 50.29.025, or for related reasons as determined by the~~
7 ~~commissioner.~~

8 ~~(d) Coverage will not be reinstated retroactively.~~

9 ~~(4) Except for corporations covered by chapters 50.44 and 50.50~~
10 ~~RCW, personal services performed by bona fide corporate officers for~~
11 ~~corporations described under RCW 50.04.080(3) and 50.04.090(2) are not~~
12 ~~considered services in employment, unless the corporation registers~~
13 ~~with the department as required in RCW 50.12.070 and elects to provide~~
14 ~~coverage for its corporate officers under RCW 50.24.160)) cover not~~
15 ~~less than all of its corporate officers under RCW 50.24.160. If an~~
16 ~~employer does not elect to cover its corporate officers under RCW~~
17 ~~50.24.160, the employer must notify its corporate officers in writing~~
18 ~~that they are ineligible for unemployment benefits. However, if the~~
19 ~~employer fails to provide notice, the individual's status as a~~
20 ~~corporate officer is unchanged and the person remains ineligible for~~
21 ~~unemployment benefits.~~

22 **Sec. 3.** RCW 50.04.080 and 2007 c 146 s 19 are each amended to read
23 as follows:

24 ~~((1))~~ "Employer" means any individual or type of organization,
25 including any partnership, association, trust, estate, joint stock
26 company, insurance company, limited liability company, or corporation,
27 whether domestic or foreign, or the receiver, trustee in bankruptcy,
28 trustee, or the legal representative of a deceased person, having any
29 person in employment or, having become an employer, has not ceased to
30 be an employer as provided in this title.

31 ~~((2) For the purposes of collection remedies available under~~
32 ~~chapter 50.24 RCW, "employer," in the case of a corporation or limited~~
33 ~~liability company, includes persons found personally liable for any~~
34 ~~unpaid contributions and interest and penalties on those contributions~~
35 ~~under RCW 50.24.230.~~

36 ~~(3) Except for corporations covered by chapters 50.44 and 50.50~~
37 ~~RCW, "employer" does not include a corporation when all personal~~

1 ~~services are performed only by bona fide corporate officers, unless the~~
2 ~~corporation registers with the department as required in RCW 50.12.070~~
3 ~~and elects to provide coverage for its corporate officers under RCW~~
4 ~~50.24.160.))~~

5 **Sec. 4.** RCW 50.04.090 and 2007 c 146 s 20 are each amended to read
6 as follows:

7 ((~~1~~)) "Employing unit" means any individual or any type of
8 organization, including any partnership, association, trust, estate,
9 joint stock company, insurance company, or corporation, whether
10 domestic or foreign, or the receiver, trustee in bankruptcy, trustee or
11 successor thereof, or the legal representative of a deceased person,
12 which has or subsequent to January 1, 1937, had in its employ or in its
13 "employment" one or more individuals performing services within this
14 state. The state and its political subdivisions shall be deemed
15 employing units as to any transactions occurring on or after September
16 21, 1977, which would render an employing unit liable for
17 contributions, interest, or penalties under RCW 50.24.130. "Employing
18 unit" includes Indian tribes as defined in RCW 50.50.010.

19 ((~~2~~ ~~Except for corporations covered by chapters 50.44 and 50.50~~
20 ~~RCW, "employing unit" does not include a corporation when all personal~~
21 ~~services are performed only by bona fide corporate officers, unless the~~
22 ~~corporation registers with the department as required in RCW 50.12.070~~
23 ~~and elects to provide coverage for its corporate officers under RCW~~
24 ~~50.24.160.))~~

25 NEW SECTION. **Sec. 5.** If any part of this act is found to be in
26 conflict with federal requirements that are a prescribed condition to
27 the allocation of federal funds to the state or the eligibility of
28 employers in this state for federal unemployment tax credits, the
29 conflicting part of this act is inoperative solely to the extent of the
30 conflict, and the finding or determination does not affect the
31 operation of the remainder of this act. Rules adopted under this act
32 must meet federal requirements that are a necessary condition to the
33 receipt of federal funds by the state or the granting of federal
34 unemployment tax credits to employers in this state.

1 NEW_SECTION. **Sec. 6.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW_SECTION. **Sec. 7.** This act takes effect December 29, 2013.
Passed by the Senate April 22, 2013.
Passed by the House April 9, 2013.
Approved by the Governor May 15, 2013.
Filed in Office of Secretary of State May 16, 2013.