
SUBSTITUTE HOUSE BILL 1399

State of Washington

66th Legislature

2019 Regular Session

By House Labor & Workplace Standards (originally sponsored by Representatives Robinson, Doglio, Sells, Hudgins, Ormsby, Springer, Gregerson, Frame, Appleton, Bergquist, Riccelli, Tharinger, Stanford, Slatter, Goodman, Reeves, Macri, and Ortiz-Self; by request of Employment Security Department)

READ FIRST TIME 01/31/19.

1 AN ACT Relating to paid family and medical leave; amending RCW
2 50A.04.010, 50A.04.015, 50A.04.020, 50A.04.025, 50A.04.030,
3 50A.04.035, 50A.04.040, 50A.04.045, 50A.04.055, 50A.04.060,
4 50A.04.065, 50A.04.070, 50A.04.075, 50A.04.080, 50A.04.085,
5 50A.04.090, 50A.04.095, 50A.04.100, 50A.04.105, 50A.04.110,
6 50A.04.115, 50A.04.120, 50A.04.125, 50A.04.145, 50A.04.160,
7 50A.04.165, 50A.04.170, 50A.04.175, 50A.04.185, 50A.04.195,
8 50A.04.200, 50A.04.205, 50A.04.215, 50A.04.220, 50A.04.225,
9 50A.04.230, 50A.04.235, 50A.04.240, 50A.04.245, 50A.04.250,
10 50A.04.255, 50A.04.260, 50A.04.265, 50A.04.505, 50A.04.510,
11 50A.04.520, 50A.04.525, 50A.04.540, 50A.04.550, 50A.04.555,
12 50A.04.560, 50A.04.565, 50A.04.580, 50A.04.590, 50A.04.595,
13 50A.04.600, 50A.04.610, 50A.04.615, 50A.04.625, 50A.04.645,
14 50A.04.650, 50A.04.655, 50A.04.660, 50A.04.900, 50.29.021,
15 43.20A.080, and 42.56.410; reenacting and amending RCW 26.23.060;
16 adding new chapters to Title 50A RCW; recodifying RCW 50A.04.005,
17 50A.04.010, 50A.04.195, 50A.04.200, 50A.04.205, 50A.04.210,
18 50A.04.215, 50A.04.220, 50A.04.225, 50A.04.235, 50A.04.255,
19 50A.04.265, 50A.04.900, 50A.04.105, 50A.04.110, 50A.04.115,
20 50A.04.120, 50A.04.125, 50A.04.015, 50A.04.020, 50A.04.030,
21 50A.04.035, 50A.04.040, 50A.04.045, 50A.04.050, 50A.04.055,
22 50A.04.060, 50A.04.065, 50A.04.240, 50A.04.250, 50A.04.230,
23 50A.04.600, 50A.04.605, 50A.04.610, 50A.04.615, 50A.04.620,

1 50A.04.625, 50A.04.630, 50A.04.635, 50A.04.640, 50A.04.645,
2 50A.04.650, 50A.04.655, 50A.04.660, 50A.04.665, 50A.04.025,
3 50A.04.245, 50A.04.260, 50A.04.085, 50A.04.095, 50A.04.100,
4 50A.04.090, 50A.04.130, 50A.04.135, 50A.04.140, 50A.04.145,
5 50A.04.150, 50A.04.155, 50A.04.160, 50A.04.165, 50A.04.170,
6 50A.04.175, 50A.04.180, 50A.04.185, 50A.04.190, 50A.04.500,
7 50A.04.505, 50A.04.510, 50A.04.515, 50A.04.520, 50A.04.525,
8 50A.04.530, 50A.04.535, 50A.04.540, 50A.04.545, 50A.04.550,
9 50A.04.555, 50A.04.560, 50A.04.565, 50A.04.570, 50A.04.575,
10 50A.04.580, 50A.04.585, 50A.04.590, 50A.04.595, 50A.04.070,
11 50A.04.075, and 50A.04.080; and prescribing penalties.

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

13 **Sec. 1.** RCW 50A.04.010 and 2018 c 141 s 1 are each amended to
14 read as follows:

15 Unless the context clearly requires otherwise, the definitions in
16 this section apply throughout this (~~chapter~~) title.

17 (1) "Child" includes a biological, adopted, or foster child, a
18 stepchild, or a child to whom the employee stands in loco parentis,
19 is a legal guardian, or is a de facto parent, regardless of age or
20 dependency status.

21 (2) "Commissioner" means the commissioner of the department or
22 the commissioner's designee.

23 (3) "Department" means the employment security department.

24 (4) (a) "Employee" means an individual who is in the employment of
25 an employer.

26 (b) "Employee" does not include employees of the United States of
27 America.

28 (5) "Employee's average weekly wage" means the quotient derived
29 by dividing the employee's total wages during the two quarters of the
30 employee's qualifying period in which total wages were highest by
31 twenty-six. If the result is not a multiple of one dollar, the
32 department must round the result to the next lower multiple of one
33 dollar.

34 (6) (a) "Employer" means: (i) Any individual or type of
35 organization, including any partnership, association, trust, estate,
36 joint stock company, insurance company, limited liability company, or
37 corporation, whether domestic or foreign, or the receiver, trustee in
38 bankruptcy, trustee, or the legal representative of a deceased

1 person, having any person in employment or, having become an
2 employer, has not ceased to be an employer as provided in this
3 (~~chapter~~) title; (ii) the state, state institutions, and state
4 agencies; and (iii) any unit of local government including, but not
5 limited to, a county, city, town, municipal corporation,
6 quasi-municipal corporation, or political subdivision.

7 (b) "Employer" does not include the United States of America.

8 (7) (a) "Employment" means personal service, of whatever nature,
9 unlimited by the relationship of master and servant as known to the
10 common law or any other legal relationship performed for wages or
11 under any contract calling for the performance of personal services,
12 written or oral, express or implied. The term "employment" includes
13 an individual's entire service performed within or without or both
14 within and without this state, if:

15 (i) The service is localized in this state; or

16 (ii) The service is not localized in any state, but some of the
17 service is performed in this state; and

18 (A) The base of operations of the employee is in the state, or if
19 there is no base of operations, then the place from which such
20 service is directed or controlled is in this state; or

21 (B) The base of operations or place from which such service is
22 directed or controlled is not in any state in which some part of the
23 service is performed, but the individual's residence is in this
24 state.

25 (b) "Employment" does not include:

26 (i) Self-employed individuals;

27 (ii) Services for remuneration when it is shown to the
28 satisfaction of the commissioner that:

29 (A) (I) Such individual has been and will continue to be free from
30 control or direction over the performance of such service, both under
31 his or her contract of service and in fact; and

32 (II) Such service is either outside the usual course of business
33 for which such service is performed, or that such service is
34 performed outside of all the places of business of the enterprises
35 for which such service is performed; and

36 (III) Such individual is customarily engaged in an independently
37 established trade, occupation, profession, or business, of the same
38 nature as that involved in the contract of service; or

39 (B) As a separate alternative:

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

4 (II) Such service is either outside the usual course of business
5 for which such service is performed, or that such service is
6 performed outside of all the places of business of the enterprises
7 for which such service is performed, or the individual is
8 responsible, both under the contract and in fact, for the costs of
9 the principal place of business from which the service is performed;
10 and

11 (III) Such individual is customarily engaged in an independently
12 established trade, occupation, profession, or business, of the same
13 nature as that involved in the contract of service, or such
14 individual has a principal place of business for the work the
15 individual is conducting that is eligible for a business deduction
16 for federal income tax purposes; and

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

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

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

34 (iii) Services that require registration under chapter 18.27 RCW
35 or licensing under chapter 19.28 RCW rendered by an individual when:

36 (A) The individual has been and will continue to be free from
37 control or direction over the performance of the service, both under
38 the contract of service and in fact;

39 (B) The service is either outside the usual course of business
40 for which the service is performed, or the service is performed

1 outside of all the places of business of the enterprise for which the
2 service is performed, or the individual is responsible, both under
3 the contract and in fact, for the costs of the principal place of
4 business from which the service is performed;

5 (C) The individual is customarily engaged in an independently
6 established trade, occupation, profession, or business, of the same
7 nature as that involved in the contract of service, or the individual
8 has a principal place of business for the business the individual is
9 conducting that is eligible for a business deduction for federal
10 income tax purposes, other than that furnished by the employer for
11 which the business has contracted to furnish services;

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

17 (E) On the effective date of the contract of service, or within a
18 reasonable period after the effective date of the contract, the
19 individual has an active and valid certificate of registration with
20 the department of revenue, and an active and valid account with any
21 other state agencies as required by the particular case, for the
22 business the individual is conducting for the payment of all state
23 taxes normally paid by employers and businesses and has registered
24 for and received a unified business identifier number from the state
25 of Washington;

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

30 (G) On the effective date of the contract of service, the
31 individual has a valid contractor registration pursuant to chapter
32 18.27 RCW or an electrical contractor license pursuant to chapter
33 19.28 RCW.

34 (8) "Employment benefits" means all benefits provided or made
35 available to employees by an employer, including group life
36 insurance, health insurance, disability insurance, sick leave, annual
37 leave, educational benefits, and pensions (~~except benefits that are
38 provided by a practice or written policy of an employer or through an
39 employee benefit plan as defined in 29 U.S.C. Sec. 1002(3))~~).

1 (9) "Family leave" means any leave taken by an employee from
2 work:

3 (a) To participate in providing care, including physical or
4 psychological care, for a family member of the employee made
5 necessary by a serious health condition of the family member;

6 (b) To bond with the employee's child during the first twelve
7 months after the child's birth, or the first twelve months after the
8 placement of a child under the age of eighteen with the employee; or

9 (c) Because of any qualifying exigency as permitted under the
10 federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(E)
11 and 29 C.F.R. Sec. 825.126(~~((a))~~) (b)(1) through (~~((8))~~) (9), as they
12 existed on October 19, 2017, for family members as defined in
13 subsection (10) of this section.

14 (10) "Family member" means a child, grandchild, grandparent,
15 parent, sibling, or spouse of an employee.

16 (11) "Grandchild" means a child of the employee's child.

17 (12) "Grandparent" means a parent of the employee's parent.

18 (13) "Health care provider" means: (a) A person licensed as a
19 physician under chapter 18.71 RCW or an osteopathic physician and
20 surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced
21 registered nurse practitioner under chapter 18.79 RCW; or (c) any
22 other person determined by the commissioner to be capable of
23 providing health care services.

24 (14) "Medical leave" means any leave taken by an employee from
25 work made necessary by the employee's own serious health condition.

26 (15) "Parent" means the biological, adoptive, de facto, or foster
27 parent, stepparent, or legal guardian of an employee or the
28 employee's spouse, or an individual who stood in loco parentis to an
29 employee when the employee was a child.

30 (16) "Period of incapacity" means an inability to work, attend
31 school, or perform other regular daily activities because of a
32 serious health condition, treatment of that condition or recovery
33 from it, or subsequent treatment in connection with such inpatient
34 care.

35 (17) "Premium" or "premiums" means the payments required by RCW
36 50A.04.115 (as recodified by this act) and paid to the department for
37 deposit in the family and medical leave insurance account under RCW
38 50A.04.220 (as recodified by this act).

39 (18) "Qualifying period" means the first four of the last five
40 completed calendar quarters or, if eligibility is not established,

1 the last four completed calendar quarters immediately preceding the
2 application for leave.

3 (19) (a) "Remuneration" means all compensation paid for personal
4 services including commissions and bonuses and the cash value of all
5 compensation paid in any medium other than cash.

6 (b) Previously accrued compensation, other than severance pay or
7 payments received pursuant to plant closure agreements, when assigned
8 to a specific period of time by virtue of a collective bargaining
9 agreement, individual employment contract, customary trade practice,
10 or request of the individual compensated, is considered remuneration
11 for the period to which it is assigned. Assignment clearly occurs
12 when the compensation serves to make the individual eligible for all
13 regular fringe benefits for the period to which the compensation is
14 assigned.

15 (c) Remuneration also includes settlements or other proceeds
16 received by an individual as a result of a negotiated settlement for
17 termination of an individual written employment contract prior to its
18 expiration date. The proceeds are deemed assigned in the same
19 intervals and in the same amount for each interval as compensation
20 was allocated under the contract.

21 (d) Remuneration does not include:

22 (i) The payment of tips;

23 (ii) Supplemental benefit payments made by an employer to an
24 employee in addition to any paid family or medical leave benefits
25 received by the employee; or

26 (iii) Payments to members of the armed forces of the United
27 States, including the organized militia of the state of Washington,
28 for the performance of duty for periods not exceeding seventy-two
29 hours at a time.

30 (20) (a) "Serious health condition" means an illness, injury,
31 impairment, or physical or mental condition that involves:

32 (i) Inpatient care in a hospital, hospice, or residential medical
33 care facility, including any period of incapacity; or

34 (ii) Continuing treatment by a health care provider. A serious
35 health condition involving continuing treatment by a health care
36 provider includes any one or more of the following:

37 (A) A period of incapacity of more than three consecutive, full
38 calendar days, and any subsequent treatment or period of incapacity
39 relating to the same condition, that also involves:

1 (I) Treatment two or more times, within thirty days of the first
2 day of incapacity, unless extenuating circumstances exist, by a
3 health care provider, by a nurse or physician's assistant under
4 direct supervision of a health care provider, or by a provider of
5 health care services, such as a physical therapist, under orders of,
6 or on referral by, a health care provider; or

7 (II) Treatment by a health care provider on at least one occasion
8 which results in a regimen of continuing treatment under the
9 supervision of the health care provider;

10 (B) Any period of incapacity due to pregnancy, or for prenatal
11 care;

12 (C) Any period of incapacity or treatment for such incapacity due
13 to a chronic serious health condition. A chronic serious health
14 condition is one which:

15 (I) Requires periodic visits, defined as at least twice a year,
16 for treatment by a health care provider, or by a nurse under direct
17 supervision of a health care provider;

18 (II) Continues over an extended period of time, including
19 recurring episodes of a single underlying condition; and

20 (III) May cause episodic rather than a continuing period of
21 incapacity, including asthma, diabetes, and epilepsy;

22 (D) A period of incapacity which is permanent or long term due to
23 a condition for which treatment may not be effective. The employee or
24 family member must be under the continuing supervision of, but need
25 not be receiving active treatment by, a health care provider,
26 including Alzheimer's, a severe stroke, or the terminal stages of a
27 disease; or

28 (E) Any period of absence to receive multiple treatments,
29 including any period of recovery from the treatments, by a health
30 care provider or by a provider of health care services under orders
31 of, or on referral by, a health care provider, either for: (I)
32 Restorative surgery after an accident or other injury; or (II) a
33 condition that would likely result in a period of incapacity of more
34 than three consecutive, full calendar days in the absence of medical
35 intervention or treatment, such as cancer, severe arthritis, or
36 kidney disease.

37 (b) The requirement in (a)(i) and (ii) of this subsection for
38 treatment by a health care provider means an in-person visit to a
39 health care provider. The first, or only, in-person treatment visit
40 must take place within seven days of the first day of incapacity.

1 (c) Whether additional treatment visits or a regimen of
2 continuing treatment is necessary within the thirty-day period shall
3 be determined by the health care provider.

4 (d) The term extenuating circumstances in (a)(ii)(A)(I) of this
5 subsection means circumstances beyond the employee's control that
6 prevent the follow-up visit from occurring as planned by the health
7 care provider. Whether a given set of circumstances are extenuating
8 depends on the facts. For example, extenuating circumstances exist if
9 a health care provider determines that a second in-person visit is
10 needed within the thirty-day period, but the health care provider
11 does not have any available appointments during that time period.

12 (e) Treatment for purposes of (a) of this subsection includes,
13 but is not limited to, examinations to determine if a serious health
14 condition exists and evaluations of the condition. Treatment does not
15 include routine physical examinations, eye examinations, or dental
16 examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of
17 continuing treatment includes, but is not limited to, a course of
18 prescription medication, such as an antibiotic, or therapy requiring
19 special equipment to resolve or alleviate the health condition, such
20 as oxygen. A regimen of continuing treatment that includes taking
21 over-the-counter medications, such as aspirin, antihistamines, or
22 salves, or bed rest, drinking fluids, exercise, and other similar
23 activities that can be initiated without a visit to a health care
24 provider, is not, by itself, sufficient to constitute a regimen of
25 continuing treatment for purposes of this ((chapter)) title.

26 (f) Conditions for which cosmetic treatments are administered,
27 such as most treatments for acne or plastic surgery, are not serious
28 health conditions unless inpatient hospital care is required or
29 unless complications develop. Ordinarily, unless complications arise,
30 the common cold, the flu, ear aches, upset stomach, minor ulcers,
31 headaches other than migraines, routine dental or orthodontia
32 problems, and periodontal disease are examples of conditions that are
33 not serious health conditions and do not qualify for leave under this
34 ((chapter)) title. Restorative dental or plastic surgery after an
35 injury or removal of cancerous growths are serious health conditions
36 provided all the other conditions of this section are met. Mental
37 illness resulting from stress or allergies may be serious health
38 conditions, but only if all the conditions of this section are met.

39 (g)(i) Substance abuse may be a serious health condition if the
40 conditions of this section are met. However, leave may only be taken

1 for treatment for substance abuse by a health care provider or by a
2 licensed substance abuse treatment provider. Absence because of the
3 employee's use of the substance, rather than for treatment, does not
4 qualify for leave under this (~~(chapter)~~) title.

5 (ii) Treatment for substance abuse does not prevent an employer
6 from taking employment action against an employee. The employer may
7 not take action against the employee because the employee has
8 exercised his or her right to take medical leave for treatment.
9 However, if the employer has an established policy, applied in a
10 nondiscriminatory manner that has been communicated to all employees,
11 that provides under certain circumstances an employee may be
12 terminated for substance abuse, pursuant to that policy the employee
13 may be terminated whether or not the employee is presently taking
14 medical leave. An employee may also take family leave to care for a
15 covered family member who is receiving treatment for substance abuse.
16 The employer may not take action against an employee who is providing
17 care for a covered family member receiving treatment for substance
18 abuse.

19 (h) Absences attributable to incapacity under (a)(ii)(B) or (C)
20 of this subsection qualify for leave under this (~~(chapter)~~) title
21 even though the employee or the family member does not receive
22 treatment from a health care provider during the absence, and even if
23 the absence does not last more than three consecutive, full calendar
24 days. For example, an employee with asthma may be unable to report
25 for work due to the onset of an asthma attack or because the
26 employee's health care provider has advised the employee to stay home
27 when the pollen count exceeds a certain level. An employee who is
28 pregnant may be unable to report to work because of severe morning
29 sickness.

30 (~~((20))~~) (21) "Service is localized in this state" has the same
31 meaning as described in RCW 50.04.120.

32 (~~((21))~~) (22) "Spouse" means a husband or wife, as the case may
33 be, or state registered domestic partner.

34 (~~((22))~~) (23) "State average weekly wage" means the most recent
35 average weekly wage calculated under RCW 50.04.355 and available on
36 January 1st of each year.

37 (~~((23))~~) (24) "Typical workweek hours" means:

38 (a) For an hourly employee, the average number of hours worked
39 per week by an employee since the beginning of the qualifying period;
40 and

1 (b) Forty hours for a salaried employee, regardless of the number
2 of hours the salaried employee typically works.

3 (~~((24))~~) (25) "Wage" or "wages" means (~~(the same as "wages" under~~
4 ~~RCW 50.04.320(2), except that)~~):

5 (~~(The term employment as used in RCW 50.04.320(2) is defined~~
6 ~~in this chapter)~~) For the purpose of premium assessment, the
7 remuneration paid by an employer to an employee. The maximum wages
8 subject to a premium assessment are those wages as set by the
9 commissioner under RCW 50A.04.115(4) (as recodified by this act);
10 (and)

11 (~~(the maximum wages subject to a premium assessment are those~~
12 ~~wages as set by the commissioner under RCW 50A.04.115(4). "Wages")~~)
13 For the purpose of payment of benefits, the remuneration paid by one
14 or more employers to an employee for employment during the employee's
15 qualifying period. At the request of an employee, wages may be
16 calculated on the basis of remuneration payable. The department shall
17 notify each employee that wages are calculated on the basis of
18 remuneration paid, but at the employee's request a redetermination
19 may be performed and based on remuneration payable; and

20 (c) For the purpose(~~(s)~~) of (~~(elective)~~) a self-employed person
21 electing coverage under RCW 50A.04.105 (~~(has)~~) (as recodified by this
22 act), the meaning (~~(as)~~) is defined by rule.

23 **Sec. 2.** RCW 50A.04.015 and 2017 3rd sp.s. c 5 s 3 are each
24 amended to read as follows:

25 Employees are eligible for family and medical leave benefits as
26 provided in this (~~(chapter)~~) title after working for at least eight
27 hundred twenty hours in employment during the qualifying period.

28 **Sec. 3.** RCW 50A.04.020 and 2017 3rd sp.s. c 5 s 6 are each
29 amended to read as follows:

30 (1)(a) Beginning January 1, 2020, family and medical leave are
31 available and benefits are payable to a qualified employee under this
32 section. Following a waiting period consisting of the first seven
33 consecutive calendar days (~~(of leave)~~), benefits are payable when
34 family or medical leave is required. However, no waiting period is
35 required for leave for the birth or placement of a child. The waiting
36 period begins when an otherwise eligible employee takes leave for the
37 minimum claim duration under subsection (2)(c) of this section.

1 **(b)** Benefits may continue during the continuance of the need for
2 family and medical leave, subject to the maximum and minimum weekly
3 benefits, duration, and other conditions and limitations established
4 in this ~~((chapter))~~ title. Successive periods of family and medical
5 leave caused by the same or related injury or sickness are deemed a
6 single period of family and medical leave only if separated by less
7 than four months.

8 (2) The weekly benefit shall be prorated by the percentage of
9 hours on leave compared to the number of hours provided as the
10 typical workweek hours as defined in RCW 50A.04.010 (as recodified by
11 this act).

12 (a) The benefits in this section, if not a multiple of one
13 dollar, shall be reduced to the next lower multiple of one dollar.

14 (b) Hours on leave claimed for benefits under this ~~((chapter))~~
15 title, if not a multiple of one hour, shall be reduced to the next
16 lower multiple of one hour.

17 (c) The minimum claim duration payment is for eight consecutive
18 hours of leave.

19 (3)(a) The maximum duration of paid family leave may not exceed
20 twelve times the typical workweek hours during a period of fifty-two
21 consecutive calendar weeks.

22 (b) The maximum duration of paid medical leave may not exceed
23 twelve times the typical workweek hours during a period of fifty-two
24 consecutive calendar weeks. This leave may be extended an additional
25 two times the typical workweek hours if the employee experiences a
26 serious health condition with a pregnancy that results in incapacity.

27 (c) An employee is not entitled to paid family and medical leave
28 benefits under this ~~((chapter))~~ title that exceeds a combined total
29 of sixteen times the typical workweek hours. The combined total of
30 family and medical leave may be extended to eighteen times the
31 typical workweek hours if the employee experiences a serious health
32 condition with a pregnancy that results in incapacity.

33 (4) The weekly benefit for family and medical leave shall be
34 determined as follows: If the employee's average weekly wage is: (a)
35 ~~((Fifty percent))~~ Equal to or less than one-half of the state average
36 weekly wage, then the ~~((employee's weekly))~~ benefit amount is equal
37 to ninety percent of the employee's average weekly wage; or (b)
38 greater than ~~((fifty percent))~~ one-half of the state average weekly
39 wage, then the ~~((employee's weekly))~~ benefit amount is the sum of:
40 (i) Ninety percent of ~~((the employee's average weekly wage up to~~

1 ~~fifty percent~~) one-half of the state average weekly wage; and (ii)
2 fifty percent of the difference of the employee's average weekly wage
3 (~~that is greater than fifty percent~~) and one-half of the state
4 average weekly wage.

5 (5) (a) The maximum weekly benefit for family and medical leave
6 that occurs on or after January 1, 2020, shall be one thousand
7 dollars. By September 30, 2020, and by each subsequent September
8 30th, the commissioner shall adjust the maximum weekly benefit amount
9 to ninety percent of the state average weekly wage. The adjusted
10 maximum weekly benefit amount takes effect on the following January
11 1st.

12 (b) The minimum weekly benefit shall not be less than one hundred
13 dollars per week except that if the employee's average weekly wage at
14 the time of family and medical leave is less than one hundred dollars
15 per week, the weekly benefit shall be the employee's full wage.

16 **Sec. 4.** RCW 50A.04.025 and 2017 3rd sp.s. c 5 s 31 are each
17 amended to read as follows:

18 (1) Except as provided in RCW 50A.04.600(5) (as recodified by
19 this act) and subsection (6) of this section, any employee who takes
20 family or medical leave under this (~~chapter~~) title is entitled, on
21 return from the leave:

22 (a) To be restored by the employer to the position of employment
23 held by the employee when the leave commenced; or

24 (b) To be restored by the employer to an equivalent position with
25 equivalent employment benefits, pay, and other terms and conditions
26 of employment.

27 (2) The taking of leave under this (~~chapter~~) title may not
28 result in the loss of any employment benefits accrued before the date
29 on which the leave commenced.

30 (3) Nothing in this section shall be construed to entitle any
31 restored employee to:

32 (a) The accrual of any seniority or employment benefits during
33 any period of leave; or

34 (b) Any right, benefit, or position of employment other than any
35 right, benefit, or position to which the employee would have been
36 entitled had the employee not taken the leave.

37 (4) As a condition of restoration under subsection (1) of this
38 section for an employee who has taken medical leave, the employer may
39 have a uniformly applied practice or policy that requires each such

1 employee to receive certification from the employee's health care
2 provider that the employee is able to resume work.

3 (5) Nothing in this section shall be construed to prohibit an
4 employer from requiring an employee on leave to report periodically
5 to the employer on the status and intention of the employee to return
6 to work.

7 (6) (a) This section does not apply unless the employee: (i) Works
8 for an employer with fifty or more employees; (ii) has been employed
9 by the current employer for twelve months or more; and (iii) has
10 worked for the current employer for at least one thousand two hundred
11 fifty hours during the twelve months immediately preceding the date
12 on which leave will commence. For the purposes of this subsection, an
13 employer shall be considered to employ fifty or more employees if the
14 employer employs fifty or more employees for each working day during
15 each of twenty or more calendar workweeks in the current or preceding
16 calendar year.

17 (b) An employer may deny restoration under this section to any
18 salaried employee who is among the highest paid ten percent of the
19 employees employed by the employer within seventy-five miles of the
20 facility at which the employee is employed if:

21 (i) Denial is necessary to prevent substantial and grievous
22 economic injury to the operations of the employer;

23 (ii) The employer notifies the employee of the intent of the
24 employer to deny restoration on such basis at the time the employer
25 determines that the injury would occur; and

26 (iii) The leave has commenced and the employee elects not to
27 return to employment after receiving the notice.

28 **Sec. 5.** RCW 50A.04.030 and 2017 3rd sp.s. c 5 s 12 are each
29 amended to read as follows:

30 (1) If the necessity for leave for the birth or placement of a
31 child with the employee is foreseeable based on an expected birth or
32 placement, the employee shall provide the employer with not less than
33 thirty days' notice, before the date the leave is to begin, of the
34 employee's intention to take leave for the birth or placement of a
35 child, except that if the date of the birth or placement requires
36 leave to begin in less than thirty days, the employee shall provide
37 such notice as is practicable.

1 (2) If the necessity for leave for a family member's serious
2 health condition or the employee's serious health condition is
3 foreseeable based on planned medical treatment, the employee:

4 (a) Must make a reasonable effort to schedule the treatment so as
5 not to disrupt unduly the operations of the employer, subject to the
6 approval of the health care provider of the employee or the health
7 care provider of the family member, as appropriate; and

8 (b) Must provide the employer with not less than thirty days'
9 notice, before the date the leave is to begin, of the employee's
10 intention to take leave for a family member's serious health
11 condition or the employee's serious health condition, except that if
12 the date of the treatment requires leave to begin in less than thirty
13 days, the employee must provide such notice as is practicable.

14 (3) The employer may waive any or all of the employee notice
15 requirements in this section and in RCW 50A.04.035(1)(f) (as
16 recodified by this act).

17 **Sec. 6.** RCW 50A.04.035 and 2017 3rd sp.s. c 5 s 13 are each
18 amended to read as follows:

19 (1) Family and medical leave insurance benefits are payable to an
20 employee during a period in which the employee is unable to perform
21 his or her regular or customary work because he or she is on family
22 and medical leave if the employee:

23 (a) Files an application for benefits as required by rules
24 adopted by the commissioner;

25 (b) Has met the eligibility requirements of RCW 50A.04.015 (as
26 recodified by this act) or the elective coverage requirements under
27 RCW 50A.04.105 (as recodified by this act);

28 (c) Consents to the disclosure of information or records deemed
29 private and confidential under state law. Initial disclosure of this
30 information and these records by another state agency to the
31 department is solely for purposes related to the administration of
32 this ~~((chapter))~~ title. Further disclosure of this information or
33 these records is subject to chapter ~~((50.13))~~ 50A.--- RCW ~~((and))~~
34 (the new chapter created in section 84 of this act), RCW
35 50A.04.195(3) (as recodified by this act), and RCW 50A.04.080 (as
36 recodified by this act);

37 ~~((Discloses whether or not he or she owes child support~~
38 ~~obligations as defined in RCW 50.40.050;~~

39 ~~(-e-))~~ Provides his or her social security number;

1 ~~((f))~~ (e) Provides a document authorizing the family member's
2 or employee's health care provider, as applicable, to disclose the
3 family member's or employee's health care information in the form of
4 the certification of a serious health condition;

5 ~~((g))~~ (f) Provides the employer from whom family and medical
6 leave is to be taken with written notice of the employee's intention
7 to take family leave in the same manner as an employee is required to
8 provide notice in RCW 50A.04.030 (as recodified by this act) and, in
9 the employee's initial application for benefits, attests that written
10 notice has been provided, unless notice has been waived by the
11 employer under RCW 50A.04.030(3) (as recodified by this act); and

12 ~~((h) If requested by the employer,)~~ (g) Provides documentation
13 of a military exigency, if requested by the employer.

14 (2) An employee who is not in employment for an employer at the
15 time of filing an application for benefits is exempt from subsection
16 (1) ~~((g))~~ (f) and ~~((h))~~ (g) of this section.

17 **Sec. 7.** RCW 50A.04.040 and 2017 3rd sp.s. c 5 s 7 are each
18 amended to read as follows:

19 (1) Benefits provided under this ~~(chapter)~~ title shall be paid
20 periodically and promptly, except when an employer contests a period
21 of family or medical leave. The department must send the first
22 benefit payment to the employee within fourteen calendar days after
23 the first properly completed weekly application is received by the
24 department. Subsequent payments must be sent at least biweekly
25 thereafter. If the employer contests an initial application for
26 family or medical leave benefits, the employer must notify the
27 employee and the department in a manner prescribed by the
28 commissioner within eighteen days of receipt of notice from the
29 department of the employee's filing of an application for benefits,
30 as provided under RCW 50A.04.195 (as recodified by this act). Failure
31 to timely contest an initial application shall constitute a waiver of
32 objection to the family or medical leave application. Any inquiry
33 which requires the employee's response in order to continue benefits
34 uninterrupted or unmodified shall provide a reasonable time period in
35 which to respond and include a clear and prominent statement of the
36 deadline for responding and consequences of failing to respond.

37 (2) If an employee has received one or more benefit payments
38 under this ~~(chapter)~~ title, is in continued claim status, and his
39 or her eligibility for benefits is questioned by the department or

1 contested by the employer, the employee will be conditionally paid
2 benefits without delay for any periods for which the employee files a
3 claim for benefits, until and unless the employee has been provided
4 adequate notice and an opportunity to be heard. The employee's right
5 to retain such payments is conditioned upon the department's finding
6 the employee to be eligible for such payments.

7 (a) At the employee's request, the department may hold
8 conditional payments until the question of eligibility has been
9 resolved.

10 (b) Payments will be issued for any benefits withheld under (a)
11 of this subsection if the department determines the employee is
12 eligible for benefits.

13 (c) If it is determined that the employee is ineligible for the
14 weeks paid conditionally, the overpayment cannot be waived and must
15 be repaid.

16 (3) The department must develop, in rule, a process by which an
17 employer may contest an initial application for family or medical
18 leave benefits.

19 **Sec. 8.** RCW 50A.04.045 and 2017 3rd sp.s. c 5 s 5 are each
20 amended to read as follows:

21 (1) An employee is not entitled to paid family or medical leave
22 benefits under this (~~chapter~~) title:

23 (a) For any absence occasioned by the willful intention of the
24 employee to bring about injury to or the sickness of the employee or
25 another, or resulting from any injury or sickness sustained in the
26 perpetration by the employee of an illegal act;

27 (b) For any family or medical leave commencing before the
28 employee becomes qualified for benefits under this (~~chapter~~) title;

29 (c) For an employee who is on suspension from his or her
30 employment; or

31 (d) For any (~~day in~~) period of time during which (~~a family or~~
32 ~~medical leave care recipient~~) an employee works (~~at least part of~~
33 ~~that day~~) for remuneration or profit (~~during the same or~~
34 ~~substantially similar working hours as those of the employer from~~
35 ~~which family or medical leave benefits are claimed, except that~~
36 ~~occasional scheduling adjustments with respect to secondary~~
37 ~~employments shall not prevent receipt of family or medical leave~~
38 ~~benefits~~).

1 (2) An employer may ~~((allow))~~ offer supplemental benefit payments
2 to an employee ~~((who has accrued))~~ on family or medical leave in
3 addition to any paid family or medical leave benefits the employee is
4 receiving. Supplemental benefit payments include, but are not limited
5 to, vacation, sick, or other paid time off ~~((to choose whether: (a)~~
6 ~~To take such leave; or (b) not to take such leave and receive paid~~
7 ~~family or medical leave benefits, as provided in RCW 50A.04.020))~~.
8 The choice to receive supplemental benefit payments lies with the
9 employee. Nothing in this section shall be construed as requiring an
10 employee to receive or an employer to provide supplemental benefit
11 payments.

12 (3) An individual is disqualified for benefits for any week he or
13 she has knowingly and willfully made a false statement or
14 representation involving a material fact or knowingly and willfully
15 failed to report a material fact and, as a result, has obtained or
16 attempted to obtain any benefits under the provisions of this
17 ~~((chapter))~~ title. An individual disqualified for benefits under this
18 subsection (3) for the:

19 (a) First time is disqualified for an additional twenty-six weeks
20 beginning with the Sunday of the week in which the determination is
21 mailed or delivered, and is subject to an additional penalty of
22 fifteen percent of the amount of benefits overpaid or deemed
23 overpaid;

24 (b) Second time is also disqualified for an additional fifty-two
25 weeks beginning with the Sunday of the week in which the
26 determination is mailed or delivered, and is subject to an additional
27 penalty of twenty-five percent of the amount of benefits overpaid or
28 deemed overpaid;

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

34 (4) All penalties collected under this section must be deposited
35 in the family and medical leave enforcement account created under RCW
36 50A.04.225 (as recodified by this act).

37 **Sec. 9.** RCW 50A.04.055 and 2017 3rd sp.s. c 5 s 80 are each
38 amended to read as follows:

1 (1) If the internal revenue service determines that family or
2 medical leave benefits under this (~~chapter~~) title are subject to
3 federal income tax, the department must advise an employee filing a
4 new application for benefits, at the time of filing such application,
5 that:

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

8 (b) Requirements exist pertaining to estimated tax payments;

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

12 (d) The employee is permitted to change a previously elected
13 withholding status.

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

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

20 **Sec. 10.** RCW 50A.04.060 and 2017 3rd sp.s. c 5 s 30 are each
21 amended to read as follows:

22 If an employee (~~discloses that he or she~~) owes child support
23 obligations under RCW 50A.04.035 (as recodified by this act) and the
24 department determines that the employee is qualified for benefits,
25 the department shall notify the applicable state or local child
26 support enforcement agency and deduct and withhold an amount from
27 benefits in a manner consistent with RCW 50.40.050. Consistent with
28 RCW 50A.04.035(1)(c) (as recodified by this act), the department may
29 verify (~~delinquent~~) child support obligations with the department
30 of social and health services.

31 **Sec. 11.** RCW 50A.04.065 and 2017 3rd sp.s. c 5 s 32 are each
32 amended to read as follows:

33 (1) An individual who is paid any amount as benefits under this
34 (~~chapter~~) title to which he or she is not entitled shall, unless
35 otherwise relieved pursuant to this section, be liable for repayment
36 of the amount overpaid. The department shall issue an overpayment
37 assessment setting forth the reasons for and the amount of the
38 overpayment. The amount assessed, to the extent not collected, may be

1 deducted from any future benefits payable to the individual:
2 PROVIDED, That in the absence of a back pay award, a settlement
3 affecting the allowance of benefits, fraud, misrepresentation, or
4 willful nondisclosure, every determination of liability shall be
5 mailed or personally served not later than two years after the close
6 of or final payment made on the individual's applicable eligibility
7 period for which the purported overpayment was made, whichever is
8 later, unless the merits of the claim are subjected to administrative
9 or judicial review in which event the period for serving the
10 determination of liability shall be extended to allow service of the
11 determination of liability during the six-month period following the
12 final decision affecting the claim.

13 (2) The commissioner may waive an overpayment if the commissioner
14 finds that the overpayment was not the result of fraud,
15 misrepresentation, willful nondisclosure, conditional payment, or
16 fault attributable to the individual and that the recovery thereof
17 would be against equity and good conscience. An overpayment waived
18 under this subsection shall be charged against the individual's
19 applicable entitlement for the eligibility period containing the
20 weeks to which the overpayment was attributed as though such benefits
21 had been properly paid.

22 (3) Any assessment herein provided shall constitute a
23 determination of liability from which an appeal may be had in the
24 same manner and to the same extent as provided for appeals relating
25 to determinations in respect to claims for benefits: PROVIDED, That
26 an appeal from any determination covering overpayment only shall be
27 deemed to be an appeal from the determination which was the basis for
28 establishing the overpayment unless the merits involved in the issue
29 set forth in such determination have already been heard and passed
30 upon by the appeal tribunal. If no such appeal is taken to the appeal
31 tribunal by the individual within thirty days of the delivery of the
32 notice of determination of liability, or within thirty days of the
33 mailing of the notice of determination, whichever is the earlier, the
34 determination of liability shall be deemed conclusive and final.
35 Whenever any such notice of determination of liability becomes
36 conclusive and final, the commissioner, upon giving at least twenty
37 days' notice, using a method by which the mailing can be tracked or
38 the delivery can be confirmed, may file with the superior court clerk
39 of any county within the state a warrant in the amount of the notice
40 of determination of liability plus a filing fee under RCW

1 36.18.012(10). The clerk of the county where the warrant is filed
2 shall immediately designate a superior court cause number for the
3 warrant, and the clerk shall cause to be entered in the judgment
4 docket under the superior court cause number assigned to the warrant,
5 the name of the person(s) mentioned in the warrant, the amount of the
6 notice of determination of liability, and the date when the warrant
7 was filed. The amount of the warrant as docketed shall become a lien
8 upon the title to, and any interest in, all real and personal
9 property of the person(s) against whom the warrant is issued, the
10 same as a judgment in a civil case duly docketed in the office of
11 such clerk. A warrant so docketed shall be sufficient to support the
12 issuance of writs of execution and writs of garnishment in favor of
13 the state in the manner provided by law for a civil judgment. A copy
14 of the warrant shall be mailed within five days of its filing with
15 the clerk to the person(s) mentioned in the warrant using a method by
16 which the mailing can be tracked or the delivery can be confirmed.

17 (4) Any employer who is a party to a back pay award or settlement
18 due to loss of wages shall, within thirty days of the award or
19 settlement, report to the department the amount of the award or
20 settlement, the name and social security number of the recipient of
21 the award or settlement, and the period for which it is awarded. When
22 an individual has been awarded or receives back pay, for benefit
23 purposes the amount of the back pay shall constitute wages paid in
24 the period for which it was awarded. For premium purposes, the back
25 pay award or settlement shall constitute wages paid in the period in
26 which it was actually paid. The following requirements shall also
27 apply:

28 (a) The employer shall reduce the amount of the back pay award or
29 settlement by an amount determined by the department based upon the
30 amount of paid family or medical leave benefits received by the
31 recipient of the award or settlement during the period for which the
32 back pay award or settlement was awarded;

33 (b) The employer shall pay to the paid family and medical leave
34 fund, in a manner specified by the commissioner, an amount equal to
35 the amount of such reduction;

36 (c) The employer shall also pay to the department any premiums
37 due for paid family and medical leave insurance purposes on the
38 entire amount of the back pay award or settlement notwithstanding any
39 reduction made pursuant to (a) of this subsection;

1 (d) If the employer fails to reduce the amount of the back pay
2 award or settlement as required in (a) of this subsection, the
3 department shall issue an overpayment assessment against the
4 recipient of the award or settlement in the amount that the back pay
5 award or settlement should have been reduced; and

6 (e) If the employer fails to pay to the department an amount
7 equal to the reduction as required in (b) of this subsection, the
8 department shall issue an assessment of liability against the
9 employer that shall be collected pursuant to the procedures for
10 collection of assessments provided herein and in RCW 50A.04.155 (as
11 recodified by this act).

12 (5) When an individual fails to repay an overpayment assessment
13 that is due and fails to arrange for satisfactory repayment terms,
14 the commissioner shall impose an interest penalty of one percent per
15 month of the outstanding balance. Interest shall accrue immediately
16 on overpayments assessed pursuant to RCW 50A.04.045 (as recodified by
17 this act) and shall be imposed when the assessment becomes final. For
18 any other overpayment, interest shall accrue when the individual has
19 missed two or more of the individual's monthly payments either
20 partially or in full.

21 (6) Any penalties and interest collected pursuant to this section
22 must be deposited into the family and medical leave enforcement
23 account.

24 (7) The department shall: (a) Conduct social security number
25 cross-match audits or engage in other more effective activities that
26 ensure that individuals are entitled to all amounts of benefits that
27 they are paid; and (b) engage in other detection and recovery of
28 overpayment and collection activities.

29 **Sec. 12.** RCW 50A.04.070 and 2017 3rd sp.s. c 5 s 71 are each
30 amended to read as follows:

31 Whenever an employee of an employer who is qualified for benefits
32 under this (~~chapter~~) title is absent from work to provide family
33 leave, or take medical leave for more than seven consecutive days,
34 the employer shall provide the employee with a written statement of
35 the employee's rights under this (~~chapter~~) title in a form
36 prescribed by the commissioner. The statement must be provided to the
37 employee within five business days after the employee's seventh
38 consecutive day of absence due to family or medical leave, or within
39 five business days after the employer has received notice that the

1 employee's absence is due to family or medical leave, whichever is
2 later.

3 **Sec. 13.** RCW 50A.04.075 and 2017 3rd sp.s. c 5 s 75 are each
4 amended to read as follows:

5 Each employer shall post and keep posted, in conspicuous places
6 on the premises of the employer where notices to employees and
7 applicants for employment are customarily posted, a notice, to be
8 prepared or approved by the commissioner, setting forth excerpts
9 from, or summaries of, the pertinent provisions of this ((chapter))
10 title and information pertaining to the filing of a complaint. Any
11 employer that willfully violates this section may be subject to a
12 civil penalty of not more than one hundred dollars for each separate
13 offense. Any penalties collected by the department under this section
14 shall be deposited into the family and medical leave enforcement
15 account.

16 **Sec. 14.** RCW 50A.04.080 and 2017 3rd sp.s. c 5 s 33 are each
17 amended to read as follows:

18 (1) In the form and at the times specified in this ((chapter))
19 title and by the commissioner, an employer shall make reports,
20 furnish information, and collect and remit premiums as required by
21 this ((chapter)) title to the department. If the employer is a
22 temporary help company that provides employees on a temporary basis
23 to its customers, the temporary help company is considered the
24 employer for purposes of this section.

25 (2)(a) An employer must keep at the employer's place of business
26 a record of employment, for a period of six years, from which the
27 information needed by the department for purposes of this ((chapter))
28 title may be obtained. This record shall at all times be open to the
29 inspection of the commissioner.

30 (b) Information obtained under this ((chapter)) title from
31 employer records is confidential and not open to public inspection,
32 other than to public employees in the performance of their official
33 duties. However, an interested party shall be supplied with
34 information from employer records to the extent necessary for the
35 proper presentation of the case in question. An employer may
36 authorize inspection of the employer's records by written consent.

37 (3) The requirements relating to the collection of family and
38 medical leave premiums are as provided in this ((chapter)) title.

1 Before issuing a warning letter, the department shall enforce the
2 collection of premiums through conference and conciliation. These
3 requirements apply to:

4 (a) An employer that fails under this (~~chapter~~) title to make
5 the required reports, or fails to remit the full amount of the
6 premiums when due;

7 (b) An employer that willfully makes a false statement or
8 misrepresentation regarding a material fact, or willfully fails to
9 report a material fact, to avoid making the required reports or
10 remitting the full amount of the premiums when due under this
11 (~~chapter~~) title;

12 (c) A successor in the manner specified in RCW 50A.04.125 (as
13 recodified by this act); and

14 (d) An officer, member, or owner having control or supervision of
15 payment and/or reporting of family and medical leave premiums, or who
16 is charged with the responsibility for the filing of returns, in the
17 manner specified in RCW 50A.04.090 (as recodified by this act).

18 (4) Notwithstanding subsection (3) of this section, appeals are
19 governed by RCW 50A.04.500 (as recodified by this act).

20 **Sec. 15.** RCW 50A.04.085 and 2017 3rd sp.s. c 5 s 72 are each
21 amended to read as follows:

22 (1) It is unlawful for any employer to:

23 (a) Interfere with, restrain, or deny the exercise of, or the
24 attempt to exercise, any valid right provided under this (~~chapter~~)
25 title; or

26 (b) Discharge or in any other manner discriminate against any
27 employee for opposing any practice made unlawful by this (~~chapter~~)
28 title.

29 (2) It is unlawful for any person to discharge or in any other
30 manner discriminate against any employee because the employee has:

31 (a) Filed any complaint, or has instituted or caused to be
32 instituted any proceeding, under or related to this (~~chapter~~)
33 title;

34 (b) Given, or is about to give, any information in connection
35 with any inquiry or proceeding relating to any right provided under
36 this (~~chapter~~) title; or

37 (c) Testified, or is about to testify, in any inquiry or
38 proceeding relating to any right provided under this (~~chapter~~)
39 title.

1 **Sec. 16.** RCW 50A.04.090 and 2017 3rd sp.s. c 5 s 68 are each
2 amended to read as follows:

3 (1) An employer who willfully fails to make the required reports
4 is subject to penalties as follows: (a) For the second occurrence,
5 the penalty is seventy-five dollars; (b) for the third occurrence,
6 the penalty is one hundred fifty dollars; and (c) for the fourth
7 occurrence and for each occurrence thereafter, the penalty is two
8 hundred fifty dollars.

9 (2) An employer who willfully fails to remit the full amount of
10 the premiums when due is liable, in addition to the full amount of
11 premiums due and amounts assessed as interest under RCW 50A.04.140
12 (as recodified by this act), to a penalty equal to the premiums and
13 interest.

14 (3) Any penalties under this section shall be deposited into the
15 family and medical leave enforcement account.

16 (4) For the purposes of this section, "willful" means a knowing
17 and intentional action that is neither accidental nor the result of a
18 bona fide dispute.

19 (5) The department shall enforce the collection of penalties
20 through conference and conciliation.

21 (6) These penalties may be appealed as provided in RCW 50A.04.500
22 through 50A.04.595 (as recodified by this act).

23 **Sec. 17.** RCW 50A.04.095 and 2017 3rd sp.s. c 5 s 73 are each
24 amended to read as follows:

25 Upon complaint by an employee, the commissioner shall investigate
26 to determine if there has been compliance with ~~((this chapter))~~ RCW
27 50A.04.085 (as recodified by this act) and the related rules
28 ((adopted under this chapter)). The department will issue a
29 determination including the findings of the investigation and whether
30 a violation may have occurred. Determinations are appealable under
31 chapter 50A.-- RCW (the new chapter created in section 93 of this
32 act). If the investigation indicates that a violation may have
33 occurred, a hearing ~~((must))~~ may be held if requested by an
34 interested party in accordance with chapter 34.05 RCW. The
35 commissioner must issue a written determination including the
36 commissioner's findings after the hearing. A judicial appeal from the
37 commissioner's determination may be taken in accordance with chapter
38 34.05 RCW.

1 **Sec. 18.** RCW 50A.04.100 and 2017 3rd sp.s. c 5 s 74 are each
2 amended to read as follows:

3 Any employer who violates RCW 50A.04.085 (as recodified by this
4 act) is liable for damages equal to:

5 (1) The amount of:

6 (a) Any wages, salary, employment benefits, or other compensation
7 denied or lost to such employee by reason of the violation; or

8 (b) In a case in which wages, salary, employment benefits, or
9 other compensation have not been denied or lost to the employee, any
10 actual monetary losses sustained by the employee as a direct result
11 of the violation, such as the cost of providing care, up to a sum
12 equal to wages or salary for the employee for up to sixteen weeks, or
13 eighteen weeks if the employee experiences a serious health condition
14 with a pregnancy that results in incapacity.

15 (2)(a) The interest on the amount described in subsection (1) of
16 this section calculated at the prevailing rate; and

17 (b) For a willful violation, an additional amount as liquidated
18 damages equal to the sum of the amount described in subsection (1) of
19 this section and the interest described in this subsection (2). For
20 purposes of this section, "willful" means a knowing and intentional
21 action that is neither accidental nor the result of a bona fide
22 dispute.

23 **Sec. 19.** RCW 50A.04.105 and 2017 3rd sp.s. c 5 s 10 are each
24 amended to read as follows:

25 (1) For benefits payable beginning January 1, 2020, any self-
26 employed person, including a sole proprietor, independent contractor,
27 partner, or joint venturer, may elect coverage under this (~~chapter~~)
28 title for an initial period of not less than three years and
29 subsequent periods of not less than one year immediately following a
30 period of coverage. Those electing coverage under this section must
31 elect coverage for both family leave and medical leave and are
32 responsible for payment of one hundred percent of all premiums
33 assessed to an employee under RCW 50A.04.115 (as recodified by this
34 act). The self-employed person must file a notice of election in
35 writing with the department, in a manner as required by the
36 department in rule. The self-employed person is eligible for family
37 and medical leave benefits after working eight hundred twenty hours
38 in the state during the qualifying period following the date of
39 filing the notice.

1 (2) A self-employed person who has elected coverage may withdraw
2 from coverage within thirty days after the end of each period of
3 coverage, or at such other times as the commissioner may adopt by
4 rule, by filing a notice of withdrawal in writing with the
5 commissioner, such withdrawal to take effect not sooner than thirty
6 days after filing the notice with the commissioner.

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

14 (4) Those electing coverage are considered employers or employees
15 where the context so dictates.

16 (5) For the purposes of this section, "independent contractor"
17 means an individual excluded from employment under RCW
18 50A.04.010(7)(b)(ii) and (iii) (as recodified by this act).

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

24 (7) The department shall adopt rules for determining the hours
25 worked and the wages of individuals who elect coverage under this
26 section and rules for enforcement of this section.

27 **Sec. 20.** RCW 50A.04.110 and 2018 c 141 s 2 are each amended to
28 read as follows:

29 A federally recognized tribe may elect coverage under RCW
30 50A.04.105 (as recodified by this act). The department shall adopt
31 rules to implement this section.

32 **Sec. 21.** RCW 50A.04.115 and 2017 3rd sp.s. c 5 s 8 are each
33 amended to read as follows:

34 (1)(a) Beginning January 1, 2019, the department shall assess for
35 each individual in employment with an employer and for each
36 individual electing coverage a premium based on the amount of the
37 individual's wages subject to subsection (4) of this section.

1 (b) The premium rate for family leave benefits shall be equal to
2 one-third of the total premium rate.

3 (c) The premium rate for medical leave benefits shall be equal to
4 two-thirds of the total premium rate.

5 (2) For calendar year 2022 and thereafter, the commissioner shall
6 determine the percentage of paid claims related to family leave
7 benefits and the percentage of paid claims related to medical leave
8 benefits and adjust the premium rates set in subsection (1)(b) and
9 (c) of this section by the proportional share of paid claims.

10 (3)(a) Beginning January 1, 2019, and ending December 31, 2020,
11 the total premium rate shall be four-tenths of one percent of the
12 individual's wages subject to subsection (4) of this section.

13 (b) For family leave premiums, an employer may deduct from the
14 wages of each employee up to the full amount of the premium required.

15 (c) For medical leave premiums, an employer may deduct from the
16 wages of each employee up to forty-five percent of the full amount of
17 the premium required.

18 (d) An employer may elect to pay all or any portion of the
19 employee's share of the premium for family leave or medical leave
20 benefits, or both.

21 (4) The commissioner must annually set a maximum limit on the
22 amount of wages that is subject to a premium assessment under this
23 section that is equal to the maximum wages subject to taxation for
24 social security as determined by the social security administration.

25 (5)(a) Employers with fewer than fifty employees employed in the
26 state are not required to pay the employer portion of premiums for
27 family and medical leave.

28 (b) If an employer with fewer than fifty employees elects to pay
29 the premiums, the employer is then eligible for assistance under RCW
30 50A.04.230 (as recodified by this act).

31 (6) For calendar year 2021 and thereafter, the total premium rate
32 shall be based on the family and medical leave insurance account
33 balance ratio as of September 30th of the previous year. The
34 commissioner shall calculate the account balance ratio by dividing
35 the balance of the family and medical leave insurance account by
36 total covered wages paid by employers and those electing coverage.
37 The division shall be carried to the fourth decimal place with the
38 remaining fraction disregarded unless it amounts to five hundred-
39 thousandths or more, in which case the fourth decimal place shall be
40 rounded to the next higher digit. If the account balance ratio is:

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

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

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

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

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

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

17 (7) Beginning January 1, 2021, if the account balance ratio
18 calculated in subsection (6) of this section is below five hundredths
19 of one percent, the commissioner must assess a solvency surcharge at
20 the lowest rate necessary to provide revenue to pay for the
21 administrative and benefit costs of family and medical leave, for the
22 calendar year, as determined by the commissioner. The solvency
23 surcharge shall be at least one-tenth of one percent and no more than
24 six-tenths of one percent and be added to the total premium rate for
25 family and medical leave benefits.

26 (8) (a) The employer must collect from the employees the premiums
27 and any surcharges provided under this section through payroll
28 deductions and remit the amounts collected to the department.

29 (b) In collecting employee premiums through payroll deductions,
30 the employer shall act as the agent of the employees and shall remit
31 the amounts to the department as required by this (~~chapter~~) title.

32 (c) On September 30th of each year, the department shall average
33 the number of employees reported by an employer over the last four
34 completed calendar quarters to determine the size of the employer for
35 the next calendar year for the purposes of this section and RCW
36 50A.04.230 (as recodified by this act).

37 (9) Premiums shall be collected in the manner and at such
38 intervals as provided in this (~~chapter~~) title and directed by the
39 department.

1 (10) Premiums collected under this section are placed in trust
2 for the employees and employers that the program is intended to
3 assist.

4 (11) A city, code city, town, county, or political subdivision
5 may not enact a charter, ordinance, regulation, rule, or resolution:

6 (a) Creating a paid family or medical leave insurance program
7 that alters or amends the requirements of this ((chapter)) title for
8 any private employer;

9 (b) Providing for local enforcement of the provisions of this
10 ((chapter)) title; or

11 (c) Requiring private employers to supplement duration of leave
12 or amount of wage replacement benefits provided under this
13 ((chapter)) title.

14 **Sec. 22.** RCW 50A.04.120 and 2017 3rd sp.s. c 5 s 9 are each
15 amended to read as follows:

16 (1) An employer may file an application with the department for a
17 conditional waiver for the payment of family and medical leave
18 premiums, assessed under RCW 50A.04.115 (as recodified by this act),
19 for any employee who is:

20 (a) Physically based outside of the state;

21 (b) Employed in the state on a limited or temporary work
22 schedule; and

23 (c) Not expected to be employed in the state for eight hundred
24 twenty hours or more in a qualifying period.

25 (2) The department must approve an application that has been
26 signed by both the employee and employer verifying their belief that
27 the conditions in this subsection will be met during the qualifying
28 period.

29 (3) If the employee exceeds the eight hundred twenty hours or
30 more in a ((qualifying)) period of four consecutive complete calendar
31 quarters, the conditional waiver expires and the employer and
32 employee will be responsible for their shares of all premiums that
33 would have been paid during ((the qualifying)) this period ((in which
34 the employee exceeded the eight hundred twenty hours)) had the waiver
35 not been granted. Upon payment of the missed premiums, the employee
36 will be credited for the hours worked and will be eligible for
37 benefits under this ((chapter)) title as if the premiums were
38 originally paid.

1 **Sec. 23.** RCW 50A.04.125 and 2017 3rd sp.s. c 5 s 67 are each
2 amended to read as follows:

3 Whenever any employer quits business, or sells out, exchanges, or
4 otherwise disposes of the employer's business or stock of goods, any
5 premiums payable under this (~~chapter~~) title shall become
6 immediately due and payable, and the employer shall, within ten days,
7 make a return and pay the premiums due; and any person who becomes a
8 successor to such business shall become liable for the full amount of
9 the premiums and withhold from the purchase price a sum sufficient to
10 pay any premiums due from the employer until such time as the
11 employer produces a receipt from the employment security department
12 showing payment in full of any premiums due or a certificate that no
13 premium is due and, if such premium is not paid by the employer
14 within ten days from the date of such sale, exchange, or disposal,
15 the successor shall become liable for the payment of the full amount
16 of premiums, and the payment thereof by such successor shall, to the
17 extent thereof, be deemed a payment upon the purchase price, and if
18 such payment is greater in amount than the purchase price the amount
19 of the difference shall become a debt due such successor from the
20 employer. A successor may not be liable for any premiums due from the
21 person from whom that person has acquired a business or stock of
22 goods if that person gives written notice to the employment security
23 department of such acquisition and no assessment is issued by the
24 department within one hundred eighty days of receipt of such notice
25 against the former operator of the business and a copy thereof mailed
26 to such successor.

27 **Sec. 24.** RCW 50A.04.145 and 2017 3rd sp.s. c 5 s 60 are each
28 amended to read as follows:

29 If the amount of premiums, interest, or penalties assessed by the
30 commissioner by order and notice of assessment provided in this
31 (~~chapter~~) title is not paid within ten days after the service or
32 mailing of the order and notice of assessment, the commissioner or
33 his or her duly authorized representative may collect the amount
34 stated in said assessment by the distraint, seizure, and sale of the
35 property, goods, chattels, and effects of said delinquent employer.
36 There shall be exempt from distraint and sale under this section such
37 goods and property as are exempt from execution under the laws of
38 this state.

1 **Sec. 25.** RCW 50A.04.160 and 2017 3rd sp.s. c 5 s 63 are each
2 amended to read as follows:

3 Whenever any order and notice of assessment or jeopardy
4 assessment has become final in accordance with the provisions of this
5 (~~chapter~~) title the commissioner may file with the clerk of any
6 county within the state a warrant in the amount of the notice of
7 assessment plus interest, penalties, and a filing fee under RCW
8 36.18.012(10). The clerk of the county wherein the warrant is filed
9 shall immediately designate a superior court cause number for such
10 warrant, and the clerk shall cause to be entered in the judgment
11 docket under the superior court cause number assigned to the warrant,
12 the name of the employer mentioned in the warrant, the amount of the
13 tax, interest, penalties, and filing fee and the date when such
14 warrant was filed. The aggregate amount of such warrant as docketed
15 shall become a lien upon the title to, and interest in all real and
16 personal property of the employer against whom the warrant is issued,
17 the same as a judgment in a civil case duly docketed in the office of
18 such clerk. Such warrant so docketed shall be sufficient to support
19 the issuance of writs of execution and writs of garnishment in favor
20 of the state in the manner provided by law in the case of civil
21 judgment, wholly or partially unsatisfied. The clerk of the court
22 shall be entitled to a filing fee under RCW 36.18.012(10), which
23 shall be added to the amount of the warrant, and charged by the
24 commissioner to the employer (~~or employing unit~~). A copy of the
25 warrant shall be mailed to the employer (~~or employing unit~~) using a
26 method by which the mailing can be tracked or the delivery can be
27 confirmed within five days of filing with the clerk.

28 **Sec. 26.** RCW 50A.04.165 and 2017 3rd sp.s. c 5 s 56 are each
29 amended to read as follows:

30 The claim of the employment security department for any premiums,
31 interest, or penalties not paid when due, shall be a lien prior to
32 all other liens or claims and on a parity with prior tax liens
33 against all property and rights to property, whether real or
34 personal, belonging to the employer. In order to avail itself of the
35 lien hereby created, the department shall file with any county
36 auditor where property of the employer is located a statement and
37 claim of lien specifying the amount of delinquent premiums, interest,
38 and penalties claimed by the department. From the time of filing for
39 record, the amount required to be paid shall constitute a lien upon

1 all property and rights to property, whether real or personal, in the
2 county, owned by the employer or acquired by him or her. The lien
3 shall not be valid against any purchaser, holder of a security
4 interest, mechanic's lien, or judgment lien creditor until notice
5 thereof has been filed with the county auditor. This lien shall be
6 separate and apart from, and in addition to, any other lien or claim
7 created by, or provided for in, this (~~chapter~~) title. When any such
8 notice of lien has been so filed, the commissioner may release the
9 same by filing a certificate of release when it shall appear that the
10 amount of delinquent premiums, interest, and penalties have been
11 paid, or when such assurance of payment shall be made as the
12 commissioner may deem to be adequate. Fees for filing and releasing
13 the lien provided herein may be charged to the employer and may be
14 collected from the employer utilizing the remedies provided in this
15 (~~chapter~~) title for the collection of premiums.

16 **Sec. 27.** RCW 50A.04.170 and 2017 3rd sp.s. c 5 s 57 are each
17 amended to read as follows:

18 In the event of any distribution of an employer's assets pursuant
19 to an order of any court, including any receivership, probate, legal
20 dissolution, or similar proceeding, or in case of any assignment for
21 the benefit of creditors, composition, or similar proceeding,
22 premiums, interest, or penalties then or thereafter due shall be a
23 lien upon all the assets of such employer. Said lien is prior to all
24 other liens or claims except prior tax liens, other liens provided by
25 this (~~chapter~~) title, and claims for remuneration for services of
26 not more than two hundred fifty dollars to each claimant earned
27 within six months of the commencement of the proceeding. The mere
28 existence of a condition of insolvency or the institution of any
29 judicial proceeding for legal dissolution or of any proceeding for
30 distribution of assets shall cause such a lien to attach without
31 action on behalf of the commissioner or the state. In the event of an
32 employer's adjudication in bankruptcy, judicially confirmed extension
33 proposal, or composition, under the federal bankruptcy act of 1898,
34 as amended, premiums, interest, or penalties then or thereafter due
35 shall be entitled to such priority as provided in that act, as
36 amended.

37 **Sec. 28.** RCW 50A.04.175 and 2017 3rd sp.s. c 5 s 64 are each
38 amended to read as follows:

1 (1) If after due notice, any employer defaults in any payment of
2 premiums, interest, or penalties, the amount due may be collected by
3 civil action in the name of the state, and the employer adjudged in
4 default shall pay the cost of such action. Any lien created by this
5 (~~chapter~~) title may be foreclosed by decree of the court in any
6 such action. Civil actions brought under this (~~chapter~~) title to
7 collect premiums, interest, or penalties from an employer shall be
8 heard by the court at the earliest possible date and shall be
9 entitled to preference upon the calendar of the court over all other
10 civil actions except petitions for judicial review under this
11 (~~chapter~~) title, cases arising under the unemployment compensation
12 laws of this state, and cases arising under the industrial insurance
13 laws of this state.

14 (2) Any (~~employing unit~~) employer that is not a resident of
15 this state and that exercises the privilege of having one or more
16 individuals perform service for it within this state, and any
17 resident (~~employing unit~~) employer that exercises that privilege
18 and thereafter removes from this state, shall be deemed thereby to
19 appoint the secretary of state as its agent and attorney for the
20 acceptance of process in any action under this (~~chapter~~) title. In
21 instituting such an action against any such (~~employing unit~~)
22 employer the commissioner shall cause such process or notice to be
23 filed with the secretary of state and such service shall be
24 sufficient service upon such (~~employing unit~~) employer, and shall
25 be of the same force and validity as if served upon it personally
26 within this state: PROVIDED, That the commissioner shall forthwith
27 send notice of the service of such process or notice, together with a
28 copy thereof, by registered mail, return receipt requested, to such
29 (~~employing unit~~) employer at its last known address and such return
30 receipt, the commissioner's affidavit of compliance with the
31 provisions of this section, and a copy of the notice of service shall
32 be appended to the original of the process filed in the court in
33 which such action is pending.

34 **Sec. 29.** RCW 50A.04.185 and 2017 3rd sp.s. c 5 s 54 are each
35 amended to read as follows:

36 The commissioner may compromise any claim for premiums, interest,
37 or penalties due and owing from an employer, and any amount owed by
38 an individual because of benefit overpayments existing or arising
39 under this (~~chapter~~) title in any case where collection of the full

1 amount due and owing, whether reduced to judgment or otherwise, would
2 be against equity and good conscience. Whenever a compromise is made
3 by the commissioner in the case of a claim for premiums, interest, or
4 penalties, whether reduced to judgment or otherwise, there shall be
5 placed on file in the department a statement of the amount of
6 premiums, interest, and penalties imposed by law and claimed due,
7 attorneys' fees and costs, if any, a complete record of the
8 compromise agreement, and the amount actually paid in accordance with
9 the terms of the compromise agreement. Whenever a compromise is made
10 by the commissioner in the case of a claim of a benefit overpayment,
11 whether reduced to judgment or otherwise, there shall be placed on
12 file in the department a statement of the amount of the benefit
13 overpayment, attorneys' fees and costs, if any, a complete record of
14 the compromise agreement, and the amount actually paid in accordance
15 with the terms of the compromise agreement. If any such compromise is
16 accepted by the commissioner, within such time as may be stated in
17 the compromise or agreed to, such compromise shall be final and
18 conclusive and except upon showing of fraud or malfeasance or
19 misrepresentation of a material fact the case shall not be reopened
20 as to the matters agreed upon. In any suit, action, or proceeding,
21 such agreement or any determination, collection, payment, adjustment,
22 refund, or credit made in accordance therewith shall not be annulled,
23 modified, set aside, or disregarded.

24 **Sec. 30.** RCW 50A.04.195 and 2017 3rd sp.s. c 5 s 29 are each
25 amended to read as follows:

26 (1) The department shall establish and administer the family and
27 medical leave program and pay family and medical leave benefits as
28 specified in this (~~chapter~~) title. The department shall adopt
29 government efficiencies to improve administration and reduce costs.
30 These efficiencies shall include, to the extent feasible, combined
31 reporting and payment, with a single return, of premiums under this
32 (~~chapter~~) title and contributions under chapter 50.24 RCW.

33 (2) The department shall establish procedures and forms for
34 filing applications for benefits under this (~~chapter~~) title. The
35 department shall notify the employer within five business days of an
36 application being filed.

37 (3) The department shall use information sharing and integration
38 technology to facilitate the disclosure of relevant information or
39 records by the department, so long as an employee consents to the

1 disclosure as required under RCW 50A.04.035 (as recodified by this
2 act).

3 (4) Information contained in the files and records pertaining to
4 an employee under this chapter are confidential and not open to
5 public inspection, other than to public employees in the performance
6 of their official duties, except as provided in chapter 50A.--- RCW
7 (the new chapter created in section 84 of this act). (~~However, the~~
8 ~~employee or an authorized representative of an employee may review~~
9 ~~the records or receive specific information from the records on the~~
10 ~~presentation of the signed authorization of the employee. An employer~~
11 ~~or the employer's duly authorized representative may review the~~
12 ~~records of an employee employed by the employer in connection with a~~
13 ~~pending application. At the department's discretion, other persons~~
14 ~~may review records when such persons are rendering assistance to the~~
15 ~~department at any stage of the proceedings on any matter pertaining~~
16 ~~to the administration of this chapter.~~)

17 (5) The department shall develop and implement an outreach
18 program to ensure that employees who may be qualified to receive
19 family and medical leave benefits under this ~~((chapter))~~ title are
20 made aware of these benefits. Outreach information shall explain, in
21 an easy to understand format, eligibility requirements, the
22 application process, weekly benefit amounts, maximum benefits
23 payable, notice and certification requirements, reinstatement and
24 nondiscrimination rights, confidentiality, voluntary plans, and the
25 relationship between employment protection, leave from employment,
26 and wage replacement benefits under this ~~((chapter))~~ title and other
27 laws, collective bargaining agreements, and employer policies.
28 Outreach information shall be available in English and other primary
29 languages as defined in RCW 74.04.025.

30 (6) The department is authorized to inspect and audit employer
31 files and records relating to the family and medical leave program,
32 including employer voluntary plans.

33 **Sec. 31.** RCW 50A.04.200 and 2017 3rd sp.s. c 5 s 28 are each
34 amended to read as follows:

35 (1) The commissioner shall appoint an advisory committee to
36 review issues and topics of interest related to this ~~((chapter))~~
37 title.

38 (2) The committee is composed of ten members: (a) Four members
39 representing employees' interests in paid family and medical leave,

1 each of whom shall be appointed from a list of at least four names
2 submitted by a recognized statewide organization of employees; (b)
3 four members representing employers, each of whom shall be appointed
4 from a list of at least four names submitted by a recognized
5 statewide organization of employers; and (c) two ex officio members,
6 without a vote, one of whom shall represent the department and the
7 other shall be the ombuds for the family and medical leave program.
8 The member representing the department shall be the chair.

9 (3) The committee shall provide comment on department rule
10 making, policies, implementation of this (~~chapter~~) title,
11 utilization of benefits, and other initiatives, and study issues the
12 committee determines to require its consideration.

13 (4) The members shall serve without compensation, but are
14 entitled to reimbursement for travel expenses as provided in RCW
15 43.03.050 and 43.03.060. The committee may utilize such personnel and
16 facilities of the department as it needs, without charge. All
17 expenses of the committee must be paid by the family and medical
18 leave insurance account.

19 **Sec. 32.** RCW 50A.04.205 and 2017 3rd sp.s. c 5 s 88 are each
20 amended to read as follows:

21 (1) The commissioner shall establish an ombuds office for family
22 and medical leave within the department. The ombuds shall be
23 appointed by the governor and report directly to the commissioner of
24 the department. The ombuds is available to all employers and
25 employees in the state.

26 (2) The person appointed ombuds shall hold office for a term of
27 six years and shall continue to hold office until reappointed or
28 until his or her successor is appointed. The governor may remove the
29 ombuds only for neglect of duty, misconduct, or inability to perform
30 duties. Any vacancy shall be filled by similar appointment for the
31 remainder of the unexpired term.

32 (3) The ombuds shall:

33 (a) Offer and provide information on family and medical leave to
34 employers and employees;

35 (b) Act as an advocate for employers and employees in their
36 dealings with the department;

37 (c) Identify, investigate, and facilitate resolution of disputes
38 and complaints under this (~~chapter~~) title; and

39 (d) Refer complaints to the department when appropriate.

1 (4) The ombuds may conduct surveys of employees. Survey questions
2 and results are confidential and not subject to public disclosure.

3 (5) The ombuds is not liable for the good faith performance of
4 responsibilities under this (~~chapter~~) title.

5 (6) All of the ombuds' records and files relating to any
6 complaint or investigation made pursuant to carrying out the ombuds'
7 duties and the identities of complainants, witnesses, workers, or
8 employers shall remain confidential unless disclosure is authorized
9 by the complainant worker or his or her guardian or legal
10 representative or the employer or the employer's legal
11 representative. No disclosures may be made outside the office of the
12 ombuds without the consent of the named witnesses or complainants
13 unless the disclosure is made without the identity of any of the
14 individuals being disclosed.

15 **Sec. 33.** RCW 50A.04.215 and 2017 3rd sp.s. c 5 s 85 are each
16 amended to read as follows:

17 The commissioner shall adopt rules as necessary to implement this
18 (~~chapter~~) title.

19 **Sec. 34.** RCW 50A.04.220 and 2017 3rd sp.s. c 5 s 82 are each
20 amended to read as follows:

21 (1) The family and medical leave insurance account is created in
22 the custody of the state treasurer. All receipts from premiums
23 imposed under this (~~chapter~~) title must be deposited in the
24 account. Expenditures from the account may be used only for the
25 purposes of the family and medical leave program. Only the
26 commissioner or the commissioner's designee may authorize
27 expenditures from the account. The account is subject to the
28 allotment procedures under chapter 43.88 RCW. An appropriation is
29 required for administrative expenses, but not for benefit payments.

30 (2) Money deposited in the account shall remain a part of the
31 account until expended pursuant to the requirements of this
32 (~~chapter~~) title or transferred in accordance with subsection (3) of
33 this section. The commissioner shall maintain a separate record of
34 the deposit, obligation, expenditure, and return of funds so
35 deposited. Any money so deposited which either will not be obligated
36 within the period specified by the appropriations act or remains
37 unobligated at the end of the period, and any money which has been

1 obligated within the period but will not be expended, shall be
2 returned promptly to the family and medical leave insurance account.

3 (3) Money shall be transferred from the family and medical leave
4 insurance account and deposited in the unemployment trust fund solely
5 for the repayment of benefits not charged to employers as defined in
6 RCW 50.29.021(4) (a) (vii). The commissioner shall direct the transfer,
7 which must occur on or before the cut-off date as defined in RCW
8 50.29.010.

9 (4) Money transferred as provided in subsection (3) of this
10 section for the repayment of benefits not charged to employers shall
11 be deposited in the unemployment compensation fund and shall remain a
12 part of the unemployment compensation fund until expended pursuant to
13 RCW 50.16.030. The commissioner shall maintain a separate record of
14 the deposit, obligation, expenditure, and return of funds so
15 deposited. Any money so deposited which either will not be obligated
16 within the period specified by the appropriation law or remains
17 unobligated at the end of the period, and any money which has been
18 obligated within the period but will not be expended, shall be
19 returned promptly to the account of this state in the unemployment
20 trust fund.

21 **Sec. 35.** RCW 50A.04.225 and 2017 3rd sp.s. c 5 s 76 are each
22 amended to read as follows:

23 The family and medical leave enforcement account is created in
24 the custody of the state treasurer. Any money in the family leave
25 insurance account created in section 19, chapter 357, Laws of 2007 is
26 transferred to the account created in this section. Any penalties and
27 interest collected under RCW 50A.04.045 (as recodified by this act),
28 50A.04.065 (as recodified by this act), 50A.04.075 (as recodified by
29 this act), 50A.04.080 (as recodified by this act), 50A.04.090 (as
30 recodified by this act), 50A.04.140 (as recodified by this act), and
31 50A.04.655 (as recodified by this act) shall be deposited into the
32 account and shall be used only for the purposes of administering and
33 enforcing this (~~chapter~~) title. Only the commissioner may authorize
34 expenditures from the account. The account is subject to allotment
35 procedures under chapter 43.88 RCW, but an appropriation is not
36 required for expenditures.

37 **Sec. 36.** RCW 50A.04.230 and 2017 3rd sp.s. c 5 s 84 are each
38 amended to read as follows:

1 (1) The legislature recognizes that while family leave and
2 medical leave benefit both employees and employers, there may be
3 costs that disproportionately impact small businesses. To equitably
4 balance the risks among employers, the legislature intends to assist
5 small businesses with the costs of an employee's use of family or
6 medical leave.

7 (2) Employers with one hundred fifty or fewer employees and
8 employers with fifty or fewer employees who are assessed all premiums
9 under RCW 50A.04.115(5)(b) (as recodified by this act) may apply to
10 the department for a grant under this section.

11 (3)(a) An employer may receive a grant of three thousand dollars
12 if the employer hires a temporary worker to replace an employee on
13 family or medical leave for a period of seven days or more.

14 (b) For an employee's family or medical leave, an employer may
15 receive a grant of up to one thousand dollars as reimbursement for
16 significant additional wage-related costs due to the employee's
17 leave.

18 (c) An employer may receive a grant under (a) or (b) of this
19 subsection, but not both, except that an employer who received a
20 grant under (b) of this subsection may receive a grant of the
21 difference between the grant awarded under (b) of this subsection and
22 three thousand dollars if the employee on leave extended the leave
23 beyond the leave initially planned and the employer hired a temporary
24 worker for the employee on leave.

25 (4) An employer may apply for a grant no more than ten times per
26 calendar year and no more than once for each employee on leave.

27 (5) To be eligible for a grant, the employer must provide the
28 department written documentation showing the temporary worker hired
29 or significant wage-related costs incurred are due to an employee's
30 use of family or medical leave.

31 (6) The department must assess an employer with fewer than fifty
32 employees who receives a grant under this section for all premiums
33 for three years from the date of receipt of a grant.

34 (7) The grants under this section shall be funded from the family
35 and medical leave insurance account.

36 (8) The commissioner shall adopt rules as necessary to implement
37 this section.

38 (9) For the purposes of this section, the number of employees
39 must be calculated as provided in RCW 50A.04.115 (as recodified by
40 this act).

1 (10) An employer who has an approved voluntary plan is not
2 eligible to receive a grant under this section.

3 **Sec. 37.** RCW 50A.04.235 and 2017 3rd sp.s. c 5 s 87 are each
4 amended to read as follows:

5 Nothing in this (~~chapter~~) title requires any party to a
6 collective bargaining agreement in existence on October 19, 2017, to
7 reopen negotiations of the agreement or to apply any of the rights
8 and responsibilities under this (~~chapter~~) title unless and until
9 the existing agreement is reopened or renegotiated by the parties or
10 expires.

11 **Sec. 38.** RCW 50A.04.240 and 2017 3rd sp.s. c 5 s 69 are each
12 amended to read as follows:

13 (1) Leave from employment under this (~~chapter~~) title is in
14 addition to leave from employment during which benefits are paid or
15 are payable under Title 51 RCW or other applicable federal or state
16 industrial insurance laws.

17 (2) In any week in which an employee is eligible to receive
18 benefits under Title 50 or 51 RCW, or other applicable federal or
19 state unemployment compensation, industrial insurance, or disability
20 insurance laws, the employee is disqualified from receiving family or
21 medical leave benefits under this (~~chapter~~) title.

22 **Sec. 39.** RCW 50A.04.245 and 2017 3rd sp.s. c 5 s 70 are each
23 amended to read as follows:

24 If required by the federal family and medical leave act, as it
25 existed on October 19, 2017, during any period of family or medical
26 leave taken under this (~~chapter~~) title, the employer shall maintain
27 any existing health benefits of the employee in force for the
28 duration of such leave as if the employee had continued to work from
29 the date the employee commenced family or medical leave until the
30 date the employee returns to employment. If the employer and employee
31 share the cost of the existing health benefits, the employee remains
32 responsible for the employee's share of the cost. This section does
33 not apply to an employee who is not in employment for an employer at
34 the time of filing an application for benefits.

35 **Sec. 40.** RCW 50A.04.250 and 2017 3rd sp.s. c 5 s 79 are each
36 amended to read as follows:

1 (1) Leave under this (~~chapter~~) title and leave under the
2 federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L.
3 103-3, 107 Stat. 6, as it existed on October 19, 2017) is in addition
4 to any leave for sickness or temporary disability because of
5 pregnancy or childbirth.

6 (2) Unless otherwise expressly permitted by the employer, leave
7 taken under this (~~chapter~~) title must be taken concurrently with
8 any leave taken under the federal family and medical leave act of
9 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on
10 October 19, 2017).

11 **Sec. 41.** RCW 50A.04.255 and 2017 3rd sp.s. c 5 s 77 are each
12 amended to read as follows:

13 Nothing in this (~~chapter~~) title shall be construed to modify or
14 affect any state or local law prohibiting discrimination on the basis
15 of race, creed, religion, color, national origin, families with
16 children, sex, marital status, sexual orientation including gender
17 expression or identity, age, honorably discharged veteran or military
18 status, or the presence of any sensory, mental, or physical
19 disability or the use of a trained dog guide or service animal by a
20 person with a disability.

21 **Sec. 42.** RCW 50A.04.260 and 2017 3rd sp.s. c 5 s 78 are each
22 amended to read as follows:

23 (1) Nothing in this (~~chapter~~) title shall be construed to
24 discourage employers from:

25 (a) Adopting or retaining leave policies more generous than any
26 policies that comply with the requirements under this (~~chapter~~)
27 title; or

28 (b) Making (~~payments to supplement the~~) supplemental benefit
29 payments as provided under RCW (~~50A.04.020~~) 50A.04.045 (as
30 recodified by this act) to an employee on paid family or medical
31 leave.

32 (2) Any agreement by an individual to waive, release, or commute
33 his or her rights under this (~~chapter~~) title is void as against
34 public policy.

35 (3) After January 1, 2020, subject to RCW 50A.04.235 (as
36 recodified by this act), an employee's rights under this (~~chapter~~)
37 title may not be diminished by a collective bargaining agreement or
38 employer policy.

1 **Sec. 43.** RCW 50A.04.265 and 2017 3rd sp.s. c 5 s 81 are each
2 amended to read as follows:

3 This (~~chapter~~) title does not create a continuing entitlement
4 or contractual right. The legislature reserves the right to amend or
5 repeal all or part of this (~~chapter~~) title at any time, and a
6 benefit or other right granted under this (~~chapter~~) title exists
7 subject to the legislature's power to amend or repeal this
8 (~~chapter~~) title. There is no vested private right of any kind
9 against such amendment or repeal.

10 **Sec. 44.** RCW 50A.04.505 and 2017 3rd sp.s. c 5 s 36 are each
11 amended to read as follows:

12 (1) When an order and notice of assessment has been served upon
13 or mailed to a delinquent employer, the employer may within thirty
14 days file an appeal with the department, stating that the assessment
15 is unjust or incorrect and requesting a hearing. The appeal must set
16 forth the reasons why the assessment is objected to and the amount of
17 premiums, if any, which the employer admits to be due. If no appeal
18 is filed, the assessment shall be conclusively deemed to be just and
19 correct except that in such case, and in cases where payment of
20 premiums, interest, or penalties has been made pursuant to a jeopardy
21 assessment, the commissioner may properly entertain a subsequent
22 application for refund. The filing of an appeal on a disputed
23 assessment with the administrative law judge stays the distraint and
24 sale proceeding provided for in this (~~chapter~~) title until a final
25 decision has been made, but the filing of an appeal shall not affect
26 the right of the commissioner to perfect a lien, as provided by this
27 (~~chapter~~) title, upon the property of the employer. The filing of a
28 petition on a disputed assessment stays the accrual of interest and
29 penalties on the disputed premiums until a final decision is made.

30 (2) Within thirty days after notice of denial of refund or
31 adjustment has been mailed or delivered, whichever is the earlier, to
32 an employer, the employer may file an appeal with the department for
33 a hearing unless assessments have been appealed from and have become
34 final. The employer shall set forth the reasons why such hearing
35 should be granted and the amount which the employer believes should
36 be adjusted or refunded. If no appeal is filed within said thirty
37 days, the determination of the commissioner as stated in the notice
38 shall be final.

1 **Sec. 45.** RCW 50A.04.510 and 2017 3rd sp.s. c 5 s 53 are each
2 amended to read as follows:

3 (1) A determination of amount of benefits potentially payable
4 under this (~~chapter~~) title is not a basis for appeal. However, the
5 determination is subject to request by the employee on family and
6 medical leave for redetermination by the commissioner at any time
7 within one year from the date of delivery or mailing of such
8 determination, or any redetermination thereof. A redetermination
9 shall be furnished to the employee in writing and provide the basis
10 for appeal.

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

16 (3) A determination of allowance of benefits becomes final, in
17 the absence of a timely appeal therefrom. The commissioner may
18 redetermine such allowance at any time within two years following the
19 eligibility period in which such allowance was made in order to
20 recover any benefits for which recovery is provided under this
21 (~~chapter~~) title.

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

33 **Sec. 46.** RCW 50A.04.520 and 2017 3rd sp.s. c 5 s 38 are each
34 amended to read as follows:

35 In any proceeding before an administrative law judge involving an
36 appeal from a disputed order and notice of assessment or a disputed
37 denial of refund or adjustment, the administrative law judge, after
38 affording the parties a reasonable opportunity for hearing, shall
39 affirm, modify, or set aside the notice of assessment or denial of

1 refund. The parties shall be duly notified of such decision together
2 with the reasons, which shall be deemed to be the final decision
3 unless within thirty days after the date of notification or mailing,
4 whichever is the earlier, of such decision, further appeal is
5 perfected pursuant to the provisions of this (~~chapter~~) title
6 relating to review by the commissioner.

7 **Sec. 47.** RCW 50A.04.525 and 2018 c 141 s 4 are each amended to
8 read as follows:

9 (1) In any proceeding before an administrative law judge
10 involving a dispute of an employee's initial determination, claim for
11 waiting period credit or claim for benefits, all matters and
12 provisions of this (~~chapter~~) title relating to the employee's
13 initial determination, or right to receive such credit or benefits
14 for the period in question, shall be deemed to be in issue
15 irrespective of the particular ground or grounds set forth in the
16 notice of appeal in single employee cases.

17 (2) In any proceeding before an administrative law judge
18 involving an employee's right to benefits, all parties shall be
19 afforded an opportunity for hearing after not less than seven days'
20 notice in accordance with RCW 34.05.434.

21 (3) In any proceeding involving an appeal relating to benefit
22 determinations or benefit claims, the administrative law judge, after
23 affording the parties reasonable opportunity for fair hearing, shall
24 render its decision affirming, modifying, or setting aside the
25 determination or decisions of the department. The parties shall be
26 duly notified of such decision together with the reasons, which shall
27 be deemed to be the final decision unless, within thirty days after
28 the date of notification or mailing, whichever is the earlier, of
29 such decision, further appeal is perfected pursuant to RCW 50A.04.535
30 (as recodified by this act).

31 **Sec. 48.** RCW 50A.04.540 and 2018 c 141 s 5 are each amended to
32 read as follows:

33 After having acquired jurisdiction for review, the commissioner
34 shall review the proceedings in question. Prior to rendering a
35 decision, the commissioner may order the taking of additional
36 evidence by an administrative law judge to be made a part of the
37 record in the case. Upon the basis of evidence submitted to the
38 administrative law judge and such additional evidence as the

1 commissioner may order to be taken, the commissioner shall render a
2 decision in writing affirming, modifying, or setting aside the
3 decision of the administrative law judge. Alternatively, the
4 commissioner may order further proceedings to be held before the
5 administrative law judge, upon completion of which the administrative
6 law judge shall issue a new decision in writing affirming, modifying,
7 or setting aside the previous decision of the administrative law
8 judge. The new decision of the administrative law judge may be
9 appealed as provided under RCW 50A.04.535 (as recodified by this
10 act). The commissioner shall mail the decision of the commissioner to
11 the interested parties at their last known addresses.

12 **Sec. 49.** RCW 50A.04.550 and 2017 3rd sp.s. c 5 s 48 are each
13 amended to read as follows:

14 Any finding, determination, conclusion, declaration, or final
15 order made by the commissioner, or his or her representative or
16 delegate, or by an appeal tribunal, administrative law judge,
17 reviewing officer, or other agent of the department for the purposes
18 of this (~~chapter~~) title, shall not be conclusive, nor binding, nor
19 admissible as evidence in any separate action outside the scope of
20 this (~~chapter~~) title between an employee and the employee's present
21 or prior employer before an arbitrator, court, or judge of this state
22 or the United States, regardless of whether the prior action was
23 between the same or related parties or involved the same facts or was
24 reviewed pursuant to RCW 50A.04.565 (as recodified by this act).

25 **Sec. 50.** RCW 50A.04.555 and 2017 3rd sp.s. c 5 s 41 are each
26 amended to read as follows:

27 For good cause shown the administrative law judge or the
28 commissioner may waive the time limitations for administrative
29 appeals or petitions set forth in this (~~chapter~~) title.

30 **Sec. 51.** RCW 50A.04.560 and 2017 3rd sp.s. c 5 s 47 are each
31 amended to read as follows:

32 (1) In all court proceedings under or pursuant to this
33 (~~chapter~~) title the decision of the commissioner shall be prima
34 facie correct, and the burden of proof shall be upon the party
35 attacking the decision.

36 (2) If the court determines that the commissioner has acted
37 within the commissioner's power and has correctly construed the law,

1 the decision of the commissioner shall be confirmed; otherwise, the
2 decision shall be reversed or modified. In case of a modification or
3 reversal the superior court shall refer the decision to the
4 commissioner with an order directing the commissioner to proceed in
5 accordance with the findings of the court.

6 (3) Whenever any order and notice of assessment shall have become
7 final in accordance with the provisions of this (~~chapter~~) title,
8 the court shall upon application of the commissioner enter a judgment
9 in the amount provided for in the order and notice of assessment, and
10 the judgment shall have and be given the same effect as if entered
11 pursuant to a civil action instituted in the court.

12 **Sec. 52.** RCW 50A.04.565 and 2018 c 141 s 6 are each amended to
13 read as follows:

14 Judicial review of a decision of the commissioner involving the
15 review of a decision of an administrative law judge under this
16 (~~chapter~~) title may be had only in accordance with the procedural
17 requirements of RCW 34.05.452.

18 **Sec. 53.** RCW 50A.04.580 and 2017 3rd sp.s. c 5 s 49 are each
19 amended to read as follows:

20 An individual shall not be charged fees of any kind in any
21 proceeding involving the employee's application for initial
22 determination, or claim for waiting period credit, or claim for
23 benefits, under this (~~chapter~~) title by the commissioner or his or
24 her representatives, or by an appeal tribunal, or any court, or any
25 officer thereof. Any employee in any such proceeding before the
26 commissioner or any appeal tribunal may be represented by counsel or
27 other duly authorized agent who shall neither charge nor receive a
28 fee for such services in excess of an amount found reasonable by the
29 officer conducting such proceeding.

30 **Sec. 54.** RCW 50A.04.590 and 2017 3rd sp.s. c 5 s 52 are each
31 amended to read as follows:

32 (1) Whenever any appeal is taken from any decision of the
33 commissioner to any court, all expenses and costs incurred by the
34 commissioner, including court reporter costs and attorneys' fees and
35 all costs taxed against such commissioner, shall be paid out of the
36 family and medical leave enforcement account.

1 (2) Neither the commissioner nor the state shall be charged any
2 fee for any service rendered in connection with litigation under this
3 (~~chapter~~) title by the clerk of any court.

4 **Sec. 55.** RCW 50A.04.595 and 2017 3rd sp.s. c 5 s 51 are each
5 amended to read as follows:

6 The remedies provided in this (~~chapter~~) title for determining
7 the justness or correctness of assessments, refunds, adjustments, or
8 claims shall be exclusive and no court shall entertain any action to
9 enjoin an assessment or require a refund or adjustment except in
10 accordance with the provisions of this (~~chapter~~) title. Matters
11 which may be determined by the procedures set out in this (~~chapter~~)
12 title shall not be the subject of any declaratory judgment.

13 **Sec. 56.** RCW 50A.04.600 and 2018 c 141 s 7 are each amended to
14 read as follows:

15 (1) An employer may apply to the commissioner for approval of a
16 voluntary plan for the payment of either family leave benefits or
17 medical leave benefits, or both. The application must be submitted on
18 a form and in the manner as prescribed by the commissioner in rule.
19 The fee for the department's review of each application for approval
20 of a voluntary plan is two hundred fifty dollars.

21 (2) The benefits payable as indemnification for loss of wages
22 under any voluntary plan must be separately stated and designated
23 separately and distinctly in the plan from other benefits, if any.

24 (3) Neither an employee nor his or her employer are liable for
25 any premiums for benefits covered by an approved voluntary plan.

26 (4) (~~Except as provided in this section, an employee covered by~~
27 ~~an approved voluntary plan at the commencement of a period of family~~
28 ~~leave or a medical leave benefit period is not entitled to benefits~~
29 ~~from the state program. Benefits payable to that employee is the~~
30 ~~liability of the approved voluntary plan under which the employee was~~
31 ~~covered at the commencement of the family leave or medical leave~~
32 ~~benefit period, regardless of any subsequent serious health condition~~
33 ~~or family leave which may occur during the benefit period.)) An
34 employee may only receive payment of benefits for family leave,
35 medical leave, or both from one approved plan at a time. An employee
36 who qualifies for benefits and is simultaneously covered by more than
37 one plan under this title will receive benefits under the plan for
38 which the employee has worked the most hours during the employee's~~

1 qualifying period. The commissioner must adopt rules to allow
2 benefits or prevent duplication of benefits to employees
3 simultaneously covered by one or more approved voluntary plans and
4 the state program.

5 (5) The commissioner must approve any voluntary plan as to which
6 the commissioner finds that there is at least one employee in
7 employment and all of the following exist:

8 (a) The benefits afforded to the employees must be at least
9 equivalent to the benefits the employees are entitled to as part of
10 the state's family and medical leave program, including but not
11 limited to the duration of leave. The employer must offer at least
12 one-half of the length of leave as provided in RCW 50A.04.020(3) (as
13 recodified by this act) with pay and provide a monetary payment in an
14 amount equal to or higher than the total amount of monetary benefits
15 the employee would be entitled to receive as part of the state-run
16 program. The employer may offer the same duration of leave and
17 monetary benefits as offered under the state program.

18 (b) The sick leave an employee is entitled to under RCW 49.46.210
19 is in addition to the employer's provided benefits and is in addition
20 to any family and medical leave benefits.

21 (c) The plan is available to all of the eligible employees of the
22 employer employed in this state, including future employees.

23 (d) The employer has agreed to make the payroll deductions
24 required, if any, and transmit the proceeds to the department for any
25 portions not collected for the voluntary plan.

26 (e) The plan will be in effect for a period of not less than one
27 year and, thereafter, continuously unless the commissioner finds that
28 the employer has given notice of withdrawal from the plan in a manner
29 specified by the commissioner in rule. The plan may be withdrawn by
30 the employer on the date of any law increasing the benefit amounts or
31 the date of any change in the rate of employee premiums, if notice of
32 the withdrawal from the plan is transmitted to the commissioner not
33 less than thirty days prior to the date of that law or change. If the
34 plan is not withdrawn, it must be amended to conform to provide the
35 increased benefit amount or change in the rate of the employee's
36 premium on the date of the increase or change.

37 (f) The amount of payroll deductions from the wages of an
38 employee in effect for any voluntary plan may not exceed the maximum
39 payroll deduction for that employee as authorized under RCW
40 50A.04.115 (as recodified by this act). The deductions may not be

1 increased on other than an anniversary of the effective date of the
2 plan, except to the extent that any increase in the deductions from
3 the wages of an employee do not exceed the maximum rate authorized
4 under the state program.

5 (g) The voluntary plan provides that an employee of an employer
6 with a voluntary plan for either family leave or medical leave, or
7 both, is eligible for the plan benefits if the employee meets the
8 requirements of RCW 50A.04.015 (as recodified by this act) and has
9 worked at least three hundred forty hours for the employer during the
10 twelve months immediately preceding the date leave will commence.

11 (h) The voluntary plan provides that an employee of an employer
12 with a voluntary plan for either family leave or medical leave, or
13 both, who takes leave under the voluntary plan is entitled to the
14 employment protection provisions contained in RCW 50A.04.025 (as
15 recodified by this act) if the employee has worked for the employer
16 for at least nine months and nine hundred sixty-five hours during the
17 twelve months immediately preceding the date leave will commence.

18 (i) The voluntary plan provides that the employer maintains the
19 employee's existing health benefits as provided under RCW 50A.04.245
20 (as recodified by this act).

21 (6) (a) The department must conduct a review of the expenses
22 incurred in association with the administration of the voluntary
23 plans during the first three years after implementation and report
24 its findings to the legislature.

25 (b) The review must include an analysis of the adequacy of the
26 fee in subsection (1) of this section to cover the department's
27 administrative expenses related to reviewing and approving or denying
28 the applications and administering appeals related to voluntary
29 plans. The review must include an estimate of the next year's
30 projected administrative costs related to the voluntary plans. The
31 legislature shall adjust the fee in subsection (1) of this section as
32 needed to ensure the department's administrative expenses related to
33 the voluntary plans are covered by the fee.

34 (c) If the current receipts from the fee in subsection (1) of
35 this section are inadequate to cover the department's administrative
36 expenses related to the voluntary plans, the department may use funds
37 from the family and medical leave insurance account under RCW
38 50A.04.220 (as recodified by this act) to pay for these expenses.

1 **Sec. 57.** RCW 50A.04.610 and 2017 3rd sp.s. c 5 s 22 are each
2 amended to read as follows:

3 (1) To be eligible for any family and medical leave, an employee
4 must be in employment for eight hundred twenty hours during the
5 qualifying period, by an employer with a voluntary plan or an
6 employer utilizing the state family and medical leave plan. An
7 employee qualifies for benefits under an employer's voluntary plan
8 ~~((only))~~ after the employee works at least three hundred forty hours
9 for the current employer.

10 (2) An employer with an approved voluntary plan may waive the
11 requirements in subsection (1) of this section, in whole or in part,
12 to allow an employee to be immediately eligible for coverage under
13 the employer's voluntary plan.

14 (3) An employee who had coverage under the state plan retains
15 coverage under the state plan until such time as the employee is
16 qualified for coverage under the new employer's voluntary plan.

17 ~~((+3))~~ (4) An employee who was eligible for benefits under a
18 voluntary plan is immediately eligible for benefits under a new
19 employer's voluntary plan.

20 **Sec. 58.** RCW 50A.04.615 and 2017 3rd sp.s. c 5 s 23 are each
21 amended to read as follows:

22 (1) An employee is no longer covered by an approved voluntary
23 plan if family leave or the employee's medical leave occurred after
24 the employment relationship with the voluntary plan employer ends, or
25 if the commissioner terminates a voluntary plan.

26 (2) An employee who has ceased to be covered by an approved
27 voluntary plan is, if otherwise eligible, immediately entitled to
28 benefits from the state program to the same extent as though there
29 had been no exemption as provided in this ~~((chapter))~~ title.

30 **Sec. 59.** RCW 50A.04.625 and 2017 3rd sp.s. c 5 s 17 are each
31 amended to read as follows:

32 An employer may assume all or a greater part of the cost of the
33 voluntary plan than required under the state program. An employer may
34 deduct from the wages of an employee covered by the voluntary plan,
35 for the purpose of providing the benefits specified in this
36 ~~((chapter))~~ title, an amount not in excess of that which would be
37 required if the employee was not covered by the plan.

1 **Sec. 60.** RCW 50A.04.645 and 2017 3rd sp.s. c 5 s 27 are each
2 amended to read as follows:

3 (1) The commissioner must approve any amendment to a voluntary
4 plan adjusting the provisions thereof, as to periods after the
5 effective date of the amendment, when the commissioner finds: (a)
6 That the plan, as amended, will conform to the standards set forth in
7 this (~~chapter~~) title; and (b) that notice of the amendment has been
8 delivered to the employees at least ten days prior to the approval.

9 (2) Nothing contained in this section is intended to deny or
10 limit the right of the commissioner to adopt supplementary rules
11 regarding voluntary plans.

12 **Sec. 61.** RCW 50A.04.650 and 2017 3rd sp.s. c 5 s 21 are each
13 amended to read as follows:

14 (1) The commissioner may terminate any voluntary plan if the
15 commissioner finds that there is risk that the benefits accrued or
16 that will accrue will not be paid or for other good cause shown.

17 (2) The commissioner must give notice of the commissioner's
18 intention to terminate a plan to the employer at least ten days
19 before taking any final action. The notice must state the effective
20 date and the reason for the termination.

21 (3) On the effective date of the termination of a plan by the
22 commissioner, all moneys in the plan, including moneys paid by the
23 employer, moneys paid by the employees, moneys owed to the voluntary
24 plan by the employer but not yet paid to the plan, and any interest
25 accrued on all these moneys, must be remitted to the department and
26 deposited into the family and medical leave insurance account.

27 (4) The employer may, within ten days from mailing or personal
28 service of the notice, file an appeal in the time, manner, method,
29 and procedure provided in RCW 50A.04.500 (as recodified by this act).

30 (5) The payment of benefits and the transfer of moneys in the
31 voluntary plan may not be delayed during an employer's appeal of the
32 termination of a voluntary plan.

33 (6) If an employer's voluntary plan has been terminated by the
34 commissioner the employer is not eligible to apply for approval of
35 another voluntary plan for a period of three years.

36 **Sec. 62.** RCW 50A.04.655 and 2017 3rd sp.s. c 5 s 20 are each
37 amended to read as follows:

1 (1) An employer of a voluntary plan found to have violated this
2 (~~chapter~~) title shall be assessed the following monetary penalties:

3 (a) One thousand dollars for the first violation; and

4 (b) Two thousand dollars for the second and subsequent
5 violations.

6 (2) The commissioner shall waive collection of the penalty if the
7 employer corrects the violation within thirty days of receiving a
8 notice of the violation and the notice is for a first violation.

9 (3) The commissioner may waive collection of any penalties if the
10 commissioner determines the violation to be an inadvertent error by
11 the employer.

12 (4) Monetary penalties collected under this section shall be
13 deposited in the family and medical leave enforcement account.

14 (5) The department shall enforce the collection of penalties
15 through conference and conciliation.

16 (6) These penalties may be appealed as provided in RCW 50A.04.500
17 through 50A.04.595 (as recodified by this act).

18 **Sec. 63.** RCW 50A.04.660 and 2017 3rd sp.s. c 5 s 24 are each
19 amended to read as follows:

20 An employer may appeal any adverse decision by the department
21 (~~(regarding the)~~) related to voluntary plans. (~~and~~) An employee may
22 appeal any adverse decision by an employer(~~(s denial of liability~~
23 ~~upon the claim of an employee for family or medical leave benefits~~
24 ~~under an approved plan, in the manner specified under)~~) or the
25 employer's agent related to voluntary plans. Appeals are subject to
26 RCW 50A.04.500 (as recodified by this act).

27 **Sec. 64.** RCW 50A.04.900 and 2017 3rd sp.s. c 5 s 101 are each
28 amended to read as follows:

29 If any part of this (~~chapter~~) title is found to be in conflict
30 with federal requirements that are a prescribed condition to the
31 allocation of federal funds to the state or the eligibility of
32 employers in this state for federal unemployment tax credits, the
33 conflicting part of this (~~chapter~~) title is inoperative solely to
34 the extent of the conflict, and the finding or determination does not
35 affect the operation of the remainder of this (~~chapter~~) title.
36 Rules adopted under this (~~chapter~~) title must meet federal
37 requirements that are a necessary condition to the receipt of federal

1 funds by the state or the granting of federal unemployment tax
2 credits to employers in this state.

3 **Sec. 65.** RCW 50.29.021 and 2017 3rd sp.s. c 5 s 83 are each
4 amended to read as follows:

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

8 (2)(a) An experience rating account shall be established and
9 maintained for each employer, except employers as described in RCW
10 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
11 payments in lieu of contributions, taxable local government employers
12 as described in RCW 50.44.035, and those employers who are required
13 to make payments in lieu of contributions, based on existing records
14 of the employment security department.

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

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

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

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

31 (3) The legislature finds that certain benefit payments, in whole
32 or in part, should not be charged to the experience rating accounts
33 of employers except those employers described in RCW 50.44.010,
34 50.44.030, and 50.50.030 who have properly elected to make payments
35 in lieu of contributions, taxable local government employers
36 described in RCW 50.44.035, and those employers who are required to
37 make payments in lieu of contributions, as follows:

38 (a) Benefits paid to any individual later determined to be
39 ineligible shall not be charged to the experience rating account of

1 any contribution paying employer, except as provided in subsection
2 (5) of this section.

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

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

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

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

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

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

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

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

37 (h) With respect to claims where the minimum amount payable
38 weekly is increased to one hundred fifty-five dollars pursuant to RCW
39 50.20.1201(3), benefits paid that exceed the benefits that would have
40 been paid if the minimum amount payable weekly had been calculated

1 pursuant to RCW 50.20.120 shall not be charged to the experience
2 rating account of any contribution paying employer.

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

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

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

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

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

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

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

33 (v) Continues to be employed on a regularly scheduled permanent
34 part-time basis by a base year employer and who qualified for two
35 consecutive unemployment claims where wages were attributable to at
36 least one employer who employed the individual in both base years.
37 Benefit charge relief ceases when the employment relationship between
38 the employer requesting relief and the claimant is terminated. This
39 subsection does not apply to shared work employers under chapter
40 50.60 RCW;

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

7 (vii) Worked for an employer for twenty weeks or less, and was
8 laid off at the end of temporary employment when that employee
9 temporarily replaced a permanent employee receiving family or medical
10 leave benefits under (~~this chapter~~) Title 50A RCW, and the layoff
11 is due to the return of that permanent employee. This subsection
12 (4)(a)(vii) applies to claims with an effective date on or after
13 January 1, 2020.

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

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

32 (6) An employer's experience rating account may not be relieved
33 of charges for a benefit payment and an employer who reimburses the
34 trust fund for benefit payments may not be credited for a benefit
35 payment if a benefit payment was made because the employer or
36 employer's agent failed to respond timely or adequately to a written
37 request of the department for information relating to the claim or
38 claims without establishing good cause for the failure and the
39 employer or employer's agent has a pattern of such failures. The

1 commissioner has the authority to determine whether the employer has
2 good cause under this subsection.

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

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

- 13 (A) At least three times in the previous two years; or
- 14 (B) Twenty percent of the total current claims against the
15 employer.

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

19 **Sec. 66.** RCW 26.23.060 and 2000 c 86 s 4 and 2000 c 29 s 1 are
20 each reenacted and amended to read as follows:

21 (1) The division of child support may issue a notice of payroll
22 deduction:

23 (a) As authorized by a support order that contains a notice
24 clearly stating that child support may be collected by withholding
25 from earnings, wages, or benefits without further notice to the
26 obligated parent; or

27 (b) After service of a notice containing an income-withholding
28 provision under this chapter or chapter 74.20A RCW.

29 (2) The division of child support shall serve a notice of payroll
30 deduction upon a responsible parent's employer or upon the employment
31 security department for the state in possession of or owing any
32 benefits from the unemployment compensation fund to the responsible
33 parent pursuant to Title 50 RCW or from the paid family and medical
34 leave program under Title 50A RCW:

35 (a) In the manner prescribed for the service of a summons in a
36 civil action;

37 (b) By certified mail, return receipt requested;

38 (c) By electronic means if there is an agreement between the
39 secretary and the person, firm, corporation, association, political

1 subdivision, department of the state, or agency, subdivision, or
2 instrumentality of the United States to accept service by electronic
3 means; or

4 (d) By regular mail to a responsible parent's employer unless the
5 division of child support reasonably believes that service of process
6 in the manner prescribed in (a) or (b) of this subsection is required
7 for initiating an action to ensure employer compliance with the
8 withholding requirement.

9 (3) Service of a notice of payroll deduction upon an employer or
10 employment security department requires the employer or employment
11 security department to immediately make a mandatory payroll deduction
12 from the responsible parent's unpaid disposable earnings or
13 unemployment compensation benefits. The employer or employment
14 security department shall thereafter deduct each pay period the
15 amount stated in the notice divided by the number of pay periods per
16 month. The payroll deduction each pay period shall not exceed fifty
17 percent of the responsible parent's disposable earnings.

18 (4) A notice of payroll deduction for support shall have priority
19 over any wage assignment, garnishment, attachment, or other legal
20 process.

21 (5) The notice of payroll deduction shall be in writing and
22 include:

23 (a) The name and social security number of the responsible
24 parent;

25 (b) The amount to be deducted from the responsible parent's
26 disposable earnings each month, or alternate amounts and frequencies
27 as may be necessary to facilitate processing of the payroll
28 deduction;

29 (c) A statement that the total amount withheld shall not exceed
30 fifty percent of the responsible parent's disposable earnings;

31 (d) The address to which the payments are to be mailed or
32 delivered; and

33 (e) A notice to the responsible parent warning the responsible
34 parent that, despite the payroll deduction, the responsible parent's
35 privileges to obtain and maintain a license, as defined in RCW
36 74.20A.320, may not be renewed, or may be suspended if the parent is
37 not in compliance with a support order as defined in RCW 74.20A.320.

38 (6) An informational copy of the notice of payroll deduction
39 shall be mailed to the last known address of the responsible parent
40 by regular mail.

1 (7) An employer or employment security department that receives a
2 notice of payroll deduction shall make immediate deductions from the
3 responsible parent's unpaid disposable earnings and remit proper
4 amounts to the Washington state support registry within seven working
5 days of the date the earnings are payable to the responsible parent.

6 (8) An employer, or the employment security department, upon whom
7 a notice of payroll deduction is served, shall make an answer to the
8 division of child support within twenty days after the date of
9 service. The answer shall confirm compliance and institution of the
10 payroll deduction or explain the circumstances if no payroll
11 deduction is in effect. The answer shall also state whether the
12 responsible parent is employed by or receives earnings from the
13 employer or receives unemployment compensation benefits from the
14 employment security department, whether the employer or employment
15 security department anticipates paying earnings or unemployment
16 compensation benefits and the amount of earnings. If the responsible
17 parent is no longer employed, or receiving earnings from the
18 employer, the answer shall state the present employer's name and
19 address, if known. If the responsible parent is no longer receiving
20 unemployment compensation benefits from the employment security
21 department, the answer shall state the present employer's name and
22 address, if known.

23 The returned answer or a payment remitted to the division of
24 child support by the employer constitutes proof of service of the
25 notice of payroll deduction in the case where the notice was served
26 by regular mail.

27 (9) The employer may deduct a processing fee from the remainder
28 of the responsible parent's earnings after withholding under the
29 notice of payroll deduction, even if the remainder is exempt under
30 RCW 26.18.090. The processing fee may not exceed: (a) Ten dollars for
31 the first disbursement made to the Washington state support registry;
32 and (b) one dollar for each subsequent disbursement to the registry.

33 (10) The notice of payroll deduction shall remain in effect until
34 released by the division of child support, the court enters an order
35 terminating the notice and approving an alternate arrangement under
36 RCW 26.23.050, or until the employer no longer employs the
37 responsible parent and is no longer in possession of or owing any
38 earnings to the responsible parent. The employer shall promptly
39 notify the office of support enforcement when the employer no longer
40 employs the parent subject to the notice. For the employment security

1 department, the notice of payroll deduction shall remain in effect
2 until released by the division of child support or until the court
3 enters an order terminating the notice.

4 (11) The division of child support may use uniform interstate
5 withholding forms adopted by the United States department of health
6 and human services to take withholding actions under this section
7 whether the responsible parent is receiving earnings or unemployment
8 compensation in this state or in another state.

9 **Sec. 67.** RCW 43.20A.080 and 1997 c 58 s 1005 are each amended to
10 read as follows:

11 (1) The department shall provide the employment security
12 department quarterly with the names and social security numbers of
13 all clients in the WorkFirst program and any successor state welfare
14 program.

15 (2) The information provided by the employment security
16 department under RCW 50.13.060 for statistical analysis and welfare
17 program evaluation purposes may be used only for statistical
18 analysis, research, and evaluation purposes as provided in RCW
19 74.08A.410 and 74.08A.420. Through individual matches with accessed
20 employment security department confidential employer wage files, only
21 aggregate, statistical, group level data shall be reported. Data
22 sharing by the employment security department may be extended to
23 include the office of financial management and other such
24 governmental entities with oversight responsibility for this program.

25 (3) The department and other agencies of state government shall
26 protect the privacy of confidential personal data supplied under RCW
27 50.13.060 consistent with federal law, chapters 50.13 and 50A.---
28 (the new chapter created in section 84 of this act) RCW, and the
29 terms and conditions of a formal data-sharing agreement between the
30 employment security department and agencies of state government,
31 however the misuse or unauthorized use of confidential data supplied
32 by the employment security department is subject to the penalties in
33 RCW 50.13.080 and section 81 of this act.

34 **Sec. 68.** RCW 42.56.410 and 2005 c 274 s 421 are each amended to
35 read as follows:

36 Records maintained by the employment security department and
37 subject to chapter 50.13 or 50A.--- (the new chapter created in
38 section 84 of this act) RCW if provided to another individual or

1 organization for operational, research, or evaluation purposes are
2 exempt from disclosure under this chapter.

3 NEW SECTION. **Sec. 69.** Any assignment, pledge, or encumbrance of
4 any right to benefits that are or may become due or payable under
5 this title is void. Such rights to benefits are exempt from levy,
6 execution, attachment, or any other remedy whatsoever provided for
7 the collection of debts, except as provided in RCW 50A.04.060 (as
8 recodified by this act). Benefits received by any employee, so long
9 as they are not commingled with other funds of the recipient, are
10 exempt from any remedy whatsoever for collection of all debts except
11 debts incurred for necessities furnished to such employee or the
12 employee's spouse or dependents during the time when such individual
13 was receiving family or medical leave. Any waiver of any exemption
14 provided for in this section is void.

15 NEW SECTION. **Sec. 70.** (1) If information provided to the
16 department by another governmental agency is held private and
17 confidential by state or federal law, the department may not release
18 such information unless otherwise provided in this title.

19 (2) Information provided to the department by another
20 governmental entity conditioned upon privacy and confidentiality
21 under a provision of law is to be held private and confidential
22 according to the agreement between the department and the other
23 governmental agency unless otherwise provided in this title.

24 (3) The department may hold private and confidential information
25 obtained for statistical analysis, research, or study purposes if the
26 information was supplied voluntarily, conditioned upon maintaining
27 confidentiality of the information.

28 (4) Persons requesting disclosure of information held by the
29 department under subsection (1) or (2) of this section shall request
30 such disclosure from the agency providing the information to the
31 department rather than from the department.

32 NEW SECTION. **Sec. 71.** (1) Any information or records concerning
33 an individual or employer obtained by the department pursuant to the
34 administration of this title shall be private and confidential,
35 except as otherwise provided in this chapter or RCW 50A.04.205 (as
36 recodified by this act).

37 (2) This chapter does not create a rule of evidence.

1 NEW SECTION. **Sec. 72.** The commissioner has the authority to
2 adopt, amend, or rescind rules interpreting and implementing this
3 chapter.

4 NEW SECTION. **Sec. 73.** (1) An individual shall have access to
5 all records and information concerning that individual held by the
6 department unless the information is exempt from disclosure under RCW
7 42.56.410.

8 (2) An employer shall have access to:

9 (a) Its own records relating to any claim or determination for
10 family or medical leave benefits by an individual;

11 (b) Records and information relating to a decision to allow or
12 deny benefits if the decision is based on material information
13 provided by the employer; and

14 (c) Records and information related to that employer's premium
15 assessment.

16 (3) The department may disclose records and information deemed
17 confidential under this chapter to a third party acting on behalf of
18 an individual or employer that would otherwise be eligible to receive
19 records under subsection (1) or (2) of this section when the
20 department receives a signed release from the individual or employer.
21 The release must include a statement:

22 (a) Specifically identifying the information that is to be
23 disclosed;

24 (b) That state government files will be accessed to obtain that
25 information;

26 (c) Of the specific purpose or purposes for which the information
27 is sought and a statement that information obtained under the release
28 will only be used for that purpose or purposes; and

29 (d) Indicating all the parties who may receive the information
30 disclosed.

31 NEW SECTION. **Sec. 74.** (1) Any interested party, as defined by
32 rule, in a proceeding before the appeal tribunal or commissioner
33 shall have access to any information or records deemed private and
34 confidential under this chapter if the information or records are
35 material to the issues in that proceeding.

36 (2) No decision by the commissioner or the appeals tribunal shall
37 be deemed private and confidential under this chapter unless the
38 decision is based on information obtained in a closed hearing.

1 NEW SECTION. **Sec. 75.** (1) Information or records deemed private
2 and confidential under this chapter shall be available to parties to
3 judicial or formal administrative proceedings only upon a written
4 finding by the presiding officer that the need for the information or
5 records in the proceeding outweighs any reasons for the privacy and
6 confidentiality of the information or records.

7 (2) Information or records deemed private and confidential under
8 this chapter shall not be available in discovery proceedings unless
9 the court in which the action has been filed has made the finding in
10 subsection (1) of this section. A judicial or administrative subpoena
11 directed to the department must contain this finding. A subpoena for
12 records or information under this section must be submitted in a
13 manner prescribed by the department.

14 NEW SECTION. **Sec. 76.** (1) The department may enter into data-
15 sharing contracts and may disclose records and information deemed
16 confidential to state or local government agencies under this chapter
17 only if permitted under subsection (2) of this section and section 78
18 of this act. A state or local government agency must need the records
19 or information for an official purpose and must also provide:

20 (a) An application in writing to the department for the records
21 or information containing a statement of the official purposes for
22 which the state or local government agency needs the information or
23 records and specifically identify the records or information sought
24 from the department; and

25 (b) A written verification of the need for the specific
26 information from the director, commissioner, chief executive, or
27 other official of the requesting state or local government agency
28 either on the application or on a separate document.

29 (2) The department may disclose information or records deemed
30 confidential under this chapter to the following state or local
31 government agencies:

32 (a) To the department of social and health services to identify
33 child support obligations;

34 (b) To the department of revenue to determine potential tax
35 liability or employer compliance with registration and licensing
36 requirements;

37 (c) To the department of labor and industries to compare records
38 or information to detect improper or fraudulent claims;

1 (d) To the office of financial management for the purpose of
2 conducting periodic salary or fringe benefit studies pursuant to law;

3 (e) To the office of the state treasurer and any financial or
4 banking institutions deemed necessary by the office of the state
5 treasurer and the department for the proper administration of funds;

6 (f) To the office of the attorney general for purposes of legal
7 representation;

8 (g) To a county clerk for the purpose of RCW 9.94A.760 if
9 requested by the county clerk's office;

10 (h) To the office of administrative hearings for the purpose of
11 administering the administrative appeal process;

12 (i) To the department of enterprise services for the purpose of
13 agency administration and operations; and

14 (j) To the consolidated technology services agency for the
15 purpose of enterprise technology support.

16 NEW SECTION. **Sec. 77.** The state legislature may have access to
17 information or records deemed private and confidential under this
18 chapter if the following requirements are met:

19 (1) The legislature, a legislative committee, a legislator, or a
20 staff member finds that the information or records are necessary and
21 for official purposes; and

22 (2) The individuals and organizations whose information is
23 contained within the confidential records requested must provide a
24 signed disclosure that manifests the individual's or organization's
25 informed consent to the disclosure of the records or information to
26 the legislature, legislative committee, legislator, or staff member.

27 NEW SECTION. **Sec. 78.** The department may disclose information
28 or records deemed confidential under this chapter to the federal
29 internal revenue service if the information is deemed necessary by
30 the department to administer RCW 50A.04.055 (as recodified by this
31 act).

32 NEW SECTION. **Sec. 79.** Nothing in this chapter shall be
33 construed as limiting or restricting the effect of RCW 42.56.070(8).

34 NEW SECTION. **Sec. 80.** The family and medical leave program of
35 the department may disclose information or records deemed private and
36 confidential under this chapter to any private person or

1 organization, and by extension, the agents of any private person or
2 organization, when the disclosure is necessary to permit private
3 contracting parties to assist in the operation, management, and
4 implementation of the program in instances where certain departmental
5 functions may be delegated to private parties to increase the
6 department's efficiency or quality of service to the public. The
7 private person or organization shall use the information or records
8 solely for the purpose for which the information was disclosed and
9 shall be bound by the same rules of privacy and confidentiality as
10 department employees.

11 NEW SECTION. **Sec. 81.** (1) All private persons, government
12 agencies, and organizations authorized to receive information from
13 the department under this chapter have an affirmative obligation to
14 take all reasonable actions necessary to prevent the disclosure of
15 confidential information.

16 (2) The disclosure of any records or information by a private
17 person, government agency, or organization that obtained the records
18 or information from the department under this chapter is prohibited
19 unless expressly permitted by this chapter.

20 (3) If misuse or an unauthorized disclosure of confidential
21 records or information occurs, all parties who are aware of the
22 violation must inform the department immediately and must take all
23 reasonably available actions to rectify the disclosure to the
24 department's standards.

25 (4) The misuse or unauthorized release of records or information
26 deemed private and confidential under this chapter by any private
27 person, government agency, or organization to which access is
28 permitted by this section shall subject the person, government
29 agency, or organization to a civil penalty of up to twenty thousand
30 dollars in 2018 and annually adjusted by the department based on
31 changes in the United States consumer price index for all urban
32 consumers. Other applicable sanctions under state and federal law
33 also apply.

34 (5) Suit to enforce this section shall be brought by the attorney
35 general and the amount of any penalties collected shall be paid into
36 the department's family and medical leave enforcement account. The
37 attorney general may recover reasonable attorneys' fees for any
38 action brought to enforce this section.

1 NEW SECTION. **Sec. 82.** Where the family and medical leave
2 program of the department contracts to provide services to other
3 governmental or private organizations, the department may disclose to
4 those organizations information or records deemed private and
5 confidential that have been acquired in the performance of the
6 department's obligations under the contracts.

7 NEW SECTION. **Sec. 83.** Nothing in this chapter shall prevent the
8 disclosure of information or records deemed private and confidential
9 under this chapter if all details identifying an individual or
10 employer are deleted so long as the information or records cannot be
11 foreseeably combined with other publicly available information to
12 reveal the identity of an individual or employer.

13 NEW SECTION. **Sec. 84.** Sections 70 through 83 of this act
14 constitute a new chapter in Title 50A RCW.

15 NEW SECTION. **Sec. 85.** RCW 50A.04.005, 50A.04.010, 50A.04.195,
16 50A.04.200, 50A.04.205, 50A.04.210, 50A.04.215, 50A.04.220,
17 50A.04.225, 50A.04.235, 50A.04.255, 50A.04.265, and 50A.04.900 are
18 each recodified as sections in a new chapter in Title 50A RCW.

19 NEW SECTION. **Sec. 86.** RCW 50A.04.105, 50A.04.110, 50A.04.115,
20 50A.04.120, and 50A.04.125 are each recodified as sections in a new
21 chapter in Title 50A RCW.

22 NEW SECTION. **Sec. 87.** Section 69 of this act is codified and
23 RCW 50A.04.015, 50A.04.020, 50A.04.030, 50A.04.035, 50A.04.040,
24 50A.04.045, 50A.04.050, 50A.04.055, 50A.04.060, 50A.04.065,
25 50A.04.240, and 50A.04.250 are each recodified as sections in a new
26 chapter in Title 50A RCW.

27 NEW SECTION. **Sec. 88.** RCW 50A.04.230 is recodified as a section
28 in a new chapter in Title 50A RCW.

29 NEW SECTION. **Sec. 89.** RCW 50A.04.600, 50A.04.605, 50A.04.610,
30 50A.04.615, 50A.04.620, 50A.04.625, 50A.04.630, 50A.04.635,
31 50A.04.640, 50A.04.645, 50A.04.650, 50A.04.655, 50A.04.660, and
32 50A.04.665 are each recodified as sections in a new chapter in Title
33 50A RCW.

1 NEW SECTION. **Sec. 90.** RCW 50A.04.025, 50A.04.245, and
2 50A.04.260 are each recodified as sections in a new chapter in Title
3 50A RCW.

4 NEW SECTION. **Sec. 91.** RCW 50A.04.085, 50A.04.095, and
5 50A.04.100 are each recodified as sections in a new chapter in Title
6 50A RCW.

7 NEW SECTION. **Sec. 92.** RCW 50A.04.090, 50A.04.130, 50A.04.135,
8 50A.04.140, 50A.04.145, 50A.04.150, 50A.04.155, 50A.04.160,
9 50A.04.165, 50A.04.170, 50A.04.175, 50A.04.180, 50A.04.185, and
10 50A.04.190 are each recodified as sections in a new chapter in Title
11 50A RCW.

12 NEW SECTION. **Sec. 93.** RCW 50A.04.500, 50A.04.505, 50A.04.510,
13 50A.04.515, 50A.04.520, 50A.04.525, 50A.04.530, 50A.04.535,
14 50A.04.540, 50A.04.545, 50A.04.550, 50A.04.555, 50A.04.560,
15 50A.04.565, 50A.04.570, 50A.04.575, 50A.04.580, 50A.04.585,
16 50A.04.590, and 50A.04.595 are each recodified as sections in a new
17 chapter in Title 50A RCW.

18 NEW SECTION. **Sec. 94.** RCW 50A.04.070, 50A.04.075, and
19 50A.04.080 are each recodified as sections in a new chapter in Title
20 50A RCW.

--- END ---