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**SENATE BILL 5190**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Holy, Frockt, Conway, Hasegawa, Honeyford, Keiser, King, Lovelett, Randall, Salomon, Van De Wege, Warnick, Wilson, C., and Wilson, J.

AN ACT Relating to providing health care workers with presumptive benefits during a public health emergency; amending RCW 50.20.010 and 50.29.021; reenacting and amending RCW 50.20.050; adding a new section to chapter 50.04 RCW; adding a new section to chapter 51.32 RCW; creating a new section; and declaring an emergency.

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

**Sec.**  RCW 50.20.010 and 2020 c 7 s 8 are each amended to read as follows:

(1) An unemployed individual shall be eligible to receive waiting period credits or benefits with respect to any week in his or her eligibility period only if the commissioner finds that:

(a) He or she has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulation as the commissioner may prescribe, except that the commissioner may by regulation waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the commissioner finds that the compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this title;

(b) He or she has filed an application for an initial determination and made a claim for waiting period credit or for benefits in accordance with the provisions of this title;

(c) He or she is able to work, and is available for work in any trade, occupation, profession, or business for which he or she is reasonably fitted.

(i) To be available for work, an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him or her and must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or the commissioner's agents. If a labor agreement or dispatch rules apply, customary trade practices must be in accordance with the applicable agreement or rules.

(ii) Until June 30, 2021, an individual under quarantine or isolation, as defined by the department of health, as directed by a public health official during the novel coronavirus outbreak pursuant to the gubernatorial declaration of emergency of February 29, 2020, will meet the requirements of this subsection (1)(c) if the individual is able to perform, available to perform, and actively seeking work which can be performed while under quarantine or isolation.

(iii) For the purposes of this subsection, "customary trade practices" includes compliance with an electrical apprenticeship training program that includes a recognized referral system under apprenticeship program standards approved by the Washington state apprenticeship and training council;

(d) He or she has been unemployed for a waiting period of one week;

(e) He or she participates in reemployment services if the individual has been referred to reemployment services pursuant to the profiling system established by the commissioner under RCW 50.20.011, unless the commissioner determines that:

(i) The individual has completed such services; or

(ii) There is justifiable cause for the claimant's failure to participate in such services; and

(f) As to weeks beginning after March 31, 1981, which fall within an extended benefit period as defined in RCW 50.22.010, the individual meets the terms and conditions of RCW 50.22.020 with respect to benefits claimed in excess of twenty-six times the individual's weekly benefit amount.

(2) An individual's eligibility period for regular benefits shall be coincident to his or her established benefit year. An individual's eligibility period for additional or extended benefits shall be the periods prescribed elsewhere in this title for such benefits.

(3) During the weeks of a public health emergency, an unemployed individual may also meet the requirements of subsection (1)(c) of this section if the unemployed individual described in RCW 50.20.050(1)(b)(xii) is able to perform, available to perform, and actively seeking suitable work which will commence after quarantine or which can be performed for an employer from the individual's home.

**Sec.**  RCW 50.20.050 and 2009 c 493 s 3 and 2009 c 247 s 1 are each reenacted and amended to read as follows:

(1) With respect to ((~~claims that have an effective date on or after January 4, 2004, and for separations that occur before September 6, 2009~~)) separations that occur on or after September 6, 2009:

(a) ((~~An individual~~)) A claimant shall be disqualified from benefits beginning with the first day of the calendar week in which ((~~he or she has~~)) the claimant left work voluntarily without good cause and thereafter for seven calendar weeks and until ((~~he or she has obtained~~)) the claimant obtains bona fide work in employment covered by this title and earned wages in that employment equal to seven times ((~~his or her~~)) the claimant's weekly benefit amount. Good cause reasons to leave work are limited to reasons listed in (b) of this subsection.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

(i) The duration of the work;

(ii) The extent of direction and control by the employer over the work; and

(iii) The level of skill required for the work in light of the ((~~individual's~~)) the claimant's training and experience.

(b) ((~~An individual~~)) A claimant has good cause and is not disqualified from benefits under (a) of this subsection ((~~when~~)) only under the following circumstances:

(i) ((~~He or she~~)) The claimant has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;

(ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant pursued all reasonable alternatives to preserve ((~~his or her~~)) the claimant's employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated ((~~his or her~~)) the claimant's employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii)((~~(A) With respect to claims that have an effective date before July 2, 2006, he or she: (I)~~)) The claimant: (A) Left work to relocate for the ((~~spouse's~~)) employment ((~~that, due to a mandatory military transfer: (1) Is outside the existing labor market area; and (2) is in Washington or another state that, pursuant to statute, does not consider such an individual to have left work voluntarily without good cause; and (II) remained employed as long as was reasonable prior to the move;~~

~~(B) With respect to claims that have an effective date on or after July 2, 2006, he or she: (I) Left work to relocate for the spouse's employment that, due to a mandatory military transfer, is outside the existing labor market area; and (II) remained employed as long as was reasonable prior to the move~~)) of a spouse or domestic partner that is outside the existing labor market area; and (B) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

(v) The ((~~individual's~~)) claimant's usual compensation was reduced by twenty-five percent or more;

(vi) The ((~~individual's~~)) claimant's usual hours were reduced by twenty-five percent or more;

(vii) The ((~~individual's~~)) claimant's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the ((~~individual's~~)) claimant's job classification and labor market;

(viii) The ((~~individual's~~)) claimant's worksite safety deteriorated, the ((~~individual~~)) claimant reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The ((~~individual~~)) claimant left work because of illegal activities in the ((~~individual's~~)) claimant's worksite, the ((~~individual~~)) claimant reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time;

(x) The ((~~individual's~~)) claimant's usual work was changed to work that violates the ((~~individual's~~)) claimant's religious convictions or sincere moral beliefs; ((~~or~~))

(xi) The ((~~individual~~)) claimant left work to enter an apprenticeship program approved by the Washington state apprenticeship training council. Benefits are payable beginning Sunday of the week prior to the week in which the ((~~individual~~)) claimant begins active participation in the apprenticeship program; or

(xii) The claimant is a health care employee, during a public health emergency, who is unable to work or was terminated from work during a public health emergency due to being under quarantine from or after contracting the disease that is the subject of the public health emergency. It is presumed that the worker was exposed to the disease at the health care facility. For purposes of this subsection, "health care employee" means an employee who is directly involved in the delivery of health services in a health care facility. For purposes of this subsection "health care facility" has the same meaning as in RCW 9A.50.010. This subsection does not eliminate any employment rights an employee may have for any other violation of the law.

(2) ((~~With respect to separations that occur on or after September 6, 2009:~~

~~(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount. Good cause reasons to leave work are limited to reasons listed in (b) of this subsection.~~

~~The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:~~

~~(i) The duration of the work;~~

~~(ii) The extent of direction and control by the employer over the work; and~~

~~(iii) The level of skill required for the work in light of the individual's training and experience.~~

~~(b) An individual has good cause and is not disqualified from benefits under (a) of this subsection only under the following circumstances:~~

~~(i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;~~

~~(ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:~~

~~(A) The claimant pursued all reasonable alternatives to preserve his or her employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and~~

~~(B) The claimant terminated his or her employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;~~

~~(iii) The claimant: (A) Left work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area; and (B) remained employed as long as was reasonable prior to the move;~~

~~(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;~~

~~(v) The individual's usual compensation was reduced by twenty-five percent or more;~~

~~(vi) The individual's usual hours were reduced by twenty-five percent or more;~~

~~(vii) The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;~~

~~(viii) The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;~~

~~(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time;~~

~~(x) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs; or~~

~~(xi) The individual left work to enter an apprenticeship program approved by the Washington state apprenticeship training council. Benefits are payable beginning Sunday of the week prior to the week in which the individual begins active participation in the apprenticeship program.~~

~~(3)~~)) Notwithstanding subsection ((~~(2)~~)) (1) of this section, ((~~for separations occurring on or after July 26, 2009, an individual~~)) a claimant who was simultaneously employed in full-time employment and part-time employment and is otherwise eligible for benefits from the loss of the full-time employment shall not be disqualified from benefits because the ((~~individual~~)) claimant:

(a) Voluntarily quit the part-time employment before the loss of the full-time employment; and

(b) Did not have prior knowledge that ((~~he or she~~)) the claimant would be separated from full-time employment.

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

"Public health emergency" means a declaration or order that covers the jurisdiction where the unemployed individual was working on the date the individual became unemployed concerning any dangerous, contagious, or infectious diseases, including a pandemic, and is issued as follows:

(1) The president of the United States has declared a national or regional emergency;

(2) The governor of Washington declared a state of emergency under RCW 43.06.010(12); or

(3) The governor or state executive of another state where the unemployed individual was working at the time of the declaration declared a state of emergency.

**Sec.**  RCW 50.29.021 and 2020 c 86 s 3 are each amended to read as follows:

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

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

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

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

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

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

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer, except as provided in subsection (4) of this section.

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

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

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

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

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

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

(f) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer. This subsection (2)(f) does not apply to the calculation of contribution rates under RCW 50.29.025 for rate year 2010 and thereafter.

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

(h) With respect to claims where the minimum amount payable weekly is increased to one hundred fifty-five dollars pursuant to RCW 50.20.1201(3), benefits paid that exceed the benefits that would have been paid if the minimum amount payable weekly had been calculated pursuant to RCW 50.20.120 shall not be charged to the experience rating account of any contribution paying employer.

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

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

(3)(a) A contribution paying base year employer, except employers as provided in subsection (5) of this section, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

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

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

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

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

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

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

(vii) Worked for an employer for twenty weeks or less, and was laid off at the end of temporary employment when that employee temporarily replaced a permanent employee receiving family or medical leave benefits under Title 50A RCW, and the layoff is due to the return of that permanent employee. This subsection (3)(a)(vii) applies to claims with an effective date on or after January 1, 2020; or

(viii) Was discharged because the individual was unable to satisfy a job prerequisite required by law or administrative rule.

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

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

(5) An employer's experience rating account may not be relieved of charges for a benefit payment and an employer who reimburses the trust fund for benefit payments may not be credited for a benefit payment if a benefit payment was made because the employer or employer's agent failed to respond timely or adequately to a written request of the department for information relating to the claim or claims without establishing good cause for the failure and the employer or employer's agent has a pattern of such failures. The commissioner has the authority to determine whether the employer has good cause under this subsection.

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

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

(A) At least three times in the previous two years; or

(B) Twenty percent of the total current claims against the employer.

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

NEW SECTION. **Sec.**  If any part of sections 1 through 4 of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of sections 1 through 4 of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of sections 1 through 4 of this act. Rules adopted under sections 1 through 4 of this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

NEW SECTION. **Sec.**  A new section is added to chapter 51.32 RCW to read as follows:

(1) For health care employees who are covered under this title, there exists a prima facie presumption that any infectious or contagious diseases which are the subject of a public health emergency are occupational diseases under RCW 51.08.140 during a public health emergency. There is a presumption that the health care employee contracted or was exposed to the disease at the health care facility.

(2) The health care employee must provide verification, as required by the department by rule, to the department and the self-insured employer that the employee has contracted or is in quarantine after exposure to the infectious or contagious disease that is the subject of the public health emergency.

(3) This presumption of occupational disease may be rebutted by clear and convincing evidence that:

(a) The exposure to the infectious or contagious disease which is the subject of the public health emergency occurred from other employment or nonemployment activities; or

(b) The employee was working from the employee's home, on leave from the employee's employment, or some combination thereof, for a period of 14 or more consecutive days immediately prior to the employee's injury, occupational disease, or period of incapacity resulted from exposure to the disease which is the subject of the public health emergency.

(4) For purposes of RCW 51.32.090(7), the period of 14 consecutive calendar days shall be 10 consecutive calendar days.

(5)(a) When a determination involving the presumption established under this section is appealed to the board of industrial insurance appeals and the final decision allows the claim of benefits, the board of industrial insurance appeals shall order that all reasonable costs of the appeal, including attorneys' fees and witness fees, be paid to the worker or the worker's beneficiary by the opposing party. If the opposing party is a state fund employer, the costs and fees are paid by the employer.

(b) When a determination involving the presumption established in this section is appealed to any court and the final decision allows the claim for benefits, the court shall order that all reasonable costs of appeal, including attorneys' fees and witness fees, be paid to the worker or the worker's beneficiary by the opposing party.

(c) When reasonable costs of the appeal must be paid by the department under this section in a state fund case, the costs shall be paid from the accident fund and charged to the costs of the claim.

(6) Costs of the payments under this section shall not affect the experience rating of employers insured by the state fund. These costs shall be paid from the accident fund.

(7) For purposes of this section:

(a) "Health care employee" means an employee who is directly involved in the delivery of health services in a health care facility.

(b) "Contracted" means whichever date occurs first of the following:

(i) The date that the health care employee first missed work due to symptoms of the infectious or contagious disease;

(ii) The date the health care employee was quarantined by a medical provider or public health official; or

(iii) The date the health care employee received a positive test result confirming contraction of the infectious or contagious disease.

(c) "Health care facility" has the same meaning as in RCW 9A.50.010.

(d) "Public health emergency" means a declaration or order that covers the jurisdiction where the unemployed individual was working on the date the individual became unemployed concerning any dangerous, contagious, or infectious diseases, including a pandemic, and is issued as follows:

(i) The president of the United States has declared a national or regional emergency; or

(ii) The governor of Washington declared a state of emergency under RCW 43.06.010(12).

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**