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**SUBSTITUTE SENATE BILL 5425**

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

**By** Senate Labor, Commerce & Tribal Affairs (originally sponsored by Senators Stanford, Das, Hasegawa, Keiser, Kuderer, Nguyen, and Saldaña; by request of Employment Security Department)

AN ACT Relating to extended benefits in the unemployment insurance system; amending RCW 50.22.010; reenacting and amending RCW 50.22.020; adding a new section to chapter 50.22 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. **Sec.**  A new section is added to chapter 50.22 RCW to read as follows:

(1) Beginning December 27, 2020, through April 12, 2021, or such subsequent date as may be provided by the employment security department by rule, an individual's eligibility period under RCW 50.22.010(8)(a) shall also include any week that begins in an extended benefit period that is in effect in this state and after the individual exhausted all rights to pandemic emergency unemployment compensation, as established in the CARES act (P.L. 116-136), as amended.

(2) With respect to determining whether the state is in an extended benefit period beginning November 1, 2020, through December 31, 2021, or such subsequent date as may be provided by the employment security department by rule, the state shall disregard the requirement in RCW 50.22.010(1)(b) that no extended benefit period may begin before the fourteenth week following the end of a prior extended benefit period which was in effect.

(3) For purposes of subsections (1) and (2) of this section, the employment security department may not adopt a subsequent date by rule if the federal share of extended benefits is less than 50 percent minus any reductions required by the budget control act of 2011, P.L. 112-25.

**Sec.**  RCW 50.22.010 and 2013 c 23 s 103 are each amended to read as follows:

As used in this chapter, unless the context clearly indicates otherwise:

(1) "Extended benefit period" means a period which:

(a) Begins with the third week after a week for which there is an "on" indicator; and

(b) ((~~Ends~~)) Except as provided in section 1 of this act, ends with the third week after the first week for which there is an "off" indicator: PROVIDED, That no extended benefit period shall last for a period of less than thirteen consecutive weeks, and further that no extended benefit period may begin by reason of an "on" indicator before the fourteenth week after the close of a prior extended benefit period which was in effect with respect to this state.

(2)(a) There is an "on" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks:

(i) The rate of insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and equaled or exceeded five percent; or

(ii) For benefits for weeks of unemployment beginning after March 6, 1993:

(A) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent; and

(B) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (a)(ii)(A) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(b) This subsection applies as provided under the tax relief, unemployment insurance reauthorization, and job creation act of 2010 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this subsection:

(i) The average rate of insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in all of the preceding three calendar years and equaled or exceeded five percent; or

(ii) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent; and

(iii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (b)(ii) of this subsection, equals or exceeds one hundred ten percent of the average for any of the corresponding three-month periods ending in the three preceding calendar years.

(3)(a) "High unemployment period" means any period of unemployment beginning after March 6, 1993, during which an extended benefit period would be in effect if:

(i) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent; and

(ii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (a)(i) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(b) This subsection applies as provided under the tax relief, unemployment insurance reauthorization, and job creation act of 2010 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this subsection:

(i) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent; and

(ii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (a)(i) of this subsection, equals or exceeds one hundred ten percent of the average for any of the corresponding three-month periods ending in the three preceding calendar years.

(4) There is an "off" indicator for this state for a week only if, for the period consisting of such week and immediately preceding twelve weeks, none of the options specified in subsection (2) or (3) of this section result in an "on" indicator.

(5) "Regular benefits" means benefits payable to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen or ex-servicewomen pursuant to 5 U.S.C. chapter 85) other than extended benefits or additional benefits.

(6) "Extended benefits" means benefits payable for weeks of unemployment beginning in an extended benefit period to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen or ex-servicewomen pursuant to 5 U.S.C. chapter 85) other than regular or additional benefits.

(7) "Additional benefits" are benefits totally financed by the state and payable under this title to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(8) "Eligibility period" of an individual means:

(a) ((~~The~~)) Except as provided in section 1 of this act, the period consisting of the weeks in his or her benefit year which begin in an extended benefit period that is in effect in this state and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period; or

(b) For an individual who is eligible for emergency unemployment compensation during the extended benefit period beginning February 15, 2009, the period consisting of the week ending February 28, 2009, and applies as provided under the tax relief, unemployment insurance reauthorization, and job creation act of 2010 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this subsection.

(9) "Additional benefit eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an additional benefit period that is in effect and, if his or her benefit year ends within such additional benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were payable to him or her under this title or any other state law (including dependents' allowances and regular benefits payable to federal civilian employees and ex-servicemen or ex-servicewomen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week; or

(b) Has received, prior to such week, all of the regular benefits that were available to him or her under this title or any other state law (including dependents' allowances and regular benefits available to federal civilian employees and ex-servicemen or ex-servicewomen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week, after the cancellation of some or all of his or her wage credits or the total or partial reduction of his or her rights to regular benefits: PROVIDED, That, for the purposes of (a) and (b) of this subsection, an individual shall be deemed to have received in his or her current benefit year all of the regular benefits that were payable to him or her, or available to him or her, as the case may be, even though:

(i) As a result of a pending appeal with respect to wages or employment, or both, that were not included in the original monetary determination with respect to his or her current benefit year, he or she may subsequently be determined to be entitled to more regular benefits; or

(ii) By reason of the seasonal provisions of another state law, he or she is not entitled to regular benefits with respect to such week of unemployment (although he or she may be entitled to regular benefits with respect to future weeks of unemployment in the next season, as the case may be, in his or her current benefit year), and he or she is otherwise an exhaustee within the meaning of this section with respect to his or her right to regular benefits under such state law seasonal provisions during the season or off season in which that week of unemployment occurs; or

(iii) Having established a benefit year, no regular benefits are payable to him or her during such year because his or her wage credits were canceled or his or her right to regular benefits was totally reduced as the result of the application of a disqualification; or

(c) His or her benefit year having ended prior to such week, he or she has insufficient wages or employment, or both, on the basis of which he or she could establish in any state a new benefit year that would include such week, or having established a new benefit year that includes such week, he or she is precluded from receiving regular benefits by reason of the provision in RCW 50.04.030 which meets the requirement of section 3304(a)(7) of the federal unemployment tax act, or the similar provision in any other state law; and

(d)(i) Has no right for such week to unemployment benefits or allowances, as the case may be, under the railroad unemployment insurance act, the trade expansion act of 1962, and such other federal laws as are specified in regulations issued by the United States secretary of labor; and

(ii) Has not received and is not seeking for such week unemployment benefits under the unemployment compensation law of Canada, unless the appropriate agency finally determines that he or she is not entitled to unemployment benefits under such law for such week.

(11) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the internal revenue code of 1954.

**Sec.**  RCW 50.22.020 and 1993 c 483 s 16 and 1993 c 58 s 3 are each reenacted and amended to read as follows:

When the result would not be inconsistent with the other provisions of this chapter, the provisions of this title and commissioner's regulations enacted pursuant thereto, which apply to claims for, or the payment of, regular benefits, shall apply to claims for, and the payment of, extended benefits: PROVIDED, That

(1) Payment of extended compensation under this chapter shall not be made to any individual for any week of unemployment in his or her eligibility period—

(a) During which he or she fails to accept any offer of suitable work (as defined in subsection (3) of this section) or fails to apply for any suitable work to which he or she was referred by the employment security department; or

(b) During which he or she fails to actively engage in seeking work.

(2) If any individual is ineligible for extended compensation for any week by reason of a failure described in subsections (1)(a) or (1)(b) of this section, the individual shall be ineligible to receive extended compensation for any week which begins during a period which—

(a) Begins with the week following the week in which such failure occurs; and

(b) Does not end until such individual has been employed during at least four weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of four multiplied by the individual's weekly benefit amount (as determined under RCW 50.20.120) for his or her benefit year.

(3) For purposes of this section, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities and which does not involve conditions described in RCW 50.20.110: PROVIDED, That if the individual furnishes evidence satisfactory to the employment security department that such individual's prospects for obtaining work in his or her customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with RCW 50.20.100.

(4) Extended compensation shall not be denied under subsection (1)(a) of this section to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work if:

(a) The gross average weekly remuneration payable to such individual for the position does not exceed the sum of—

(i) The individual's weekly benefit amount (as determined under RCW 50.20.120) for his or her benefit year; plus

(ii) The amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954, 26 U.S.C. Sec. 501(c)(17)(D)), payable to such individual for such week;

(b) The position was not offered to such individual in writing ((~~and~~)) or was not listed with the employment security department;

(c) Such failure would not result in a denial of compensation under the provisions of RCW 50.20.080 and 50.20.100 to the extent such provisions are not inconsistent with the provisions of subsections (3) and (5) of this section; or

(d) The position pays wages less than the higher of—

(i) The minimum wage provided by section (6)(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(ii) Any applicable state or local minimum wage.

(5) For purposes of this section, an individual shall be treated as actively engaged in seeking work during any week if:

(a) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

(b) The individual provides tangible evidence to the employment security department that he or she has engaged in such an effort during such week.

(6) The employment security department shall refer applicants for benefits under this chapter to any suitable work to which subsections (4)(a) through (4)(d) of this section would not apply.

(7) No provisions of this title which terminates a disqualification for voluntarily leaving employment, being discharged for misconduct, or refusing suitable employment shall apply for purposes of determining eligibility for extended compensation unless such termination is based upon employment subsequent to the date of such disqualification.

(8) The provisions of subsections (1) through (7) of this section shall apply with respect to weeks of unemployment beginning after March 31, 1981: PROVIDED HOWEVER, That the provisions of subsections (1) through (7) of this section shall not apply to those weeks of unemployment beginning after March 6, 1993, and before January 1, 1995.

NEW SECTION. **Sec.**  Section 1 of this act is remedial and curative in nature and applies retroactively and prospectively to the dates listed in that section.

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.

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