
ENGROSSED SUBSTITUTE SENATE BILL 5190

State of Washington

67th Legislature

2021 Regular Session

By Senate Labor, Commerce & Tribal Affairs (originally sponsored by Senators Holy, Frockt, Conway, Hasegawa, Honeyford, Keiser, King, Lovelett, Randall, Salomon, Van De Wege, Warnick, Wilson, C., and Wilson, J.)

READ FIRST TIME 02/12/21.

1 AN ACT Relating to providing health care workers with presumptive
2 benefits during a public health emergency; amending RCW 50.04.294,
3 50.20.010, 50.20.050, 50.29.021, and 51.52.130; adding new sections
4 to chapter 51.32 RCW; creating a new section; and declaring an
5 emergency.

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

7 **Sec. 1.** RCW 50.04.294 and 2006 c 13 s 9 are each amended to read
8 as follows:

9 With respect to claims that have an effective date on or after
10 January 4, 2004:

11 (1) "Misconduct" includes, but is not limited to, the following
12 conduct by a claimant:

13 (a) Willful or wanton disregard of the rights, title, and
14 interests of the employer or a fellow employee;

15 (b) Deliberate violations or disregard of standards of behavior
16 which the employer has the right to expect of an employee;

17 (c) Carelessness or negligence that causes or would likely cause
18 serious bodily harm to the employer or a fellow employee; or

19 (d) Carelessness or negligence of such degree or recurrence to
20 show an intentional or substantial disregard of the employer's
21 interest.

1 (2) The following acts are considered misconduct because the acts
2 signify a willful or wanton disregard of the rights, title, and
3 interests of the employer or a fellow employee. These acts include,
4 but are not limited to:

5 (a) Insubordination showing a deliberate, willful, or purposeful
6 refusal to follow the reasonable directions or instructions of the
7 employer;

8 (b) Repeated inexcusable tardiness following warnings by the
9 employer;

10 (c) Dishonesty related to employment, including but not limited
11 to deliberate falsification of company records, theft, deliberate
12 deception, or lying;

13 (d) Repeated and inexcusable absences, including absences for
14 which the employee was able to give advance notice and failed to do
15 so;

16 (e) Deliberate acts that are illegal, provoke violence or
17 violation of laws, or violate the collective bargaining agreement.
18 However, an employee who engages in lawful union activity may not be
19 disqualified due to misconduct;

20 (f) Violation of a company rule if the rule is reasonable and if
21 the claimant knew or should have known of the existence of the rule;
22 or

23 (g) Violations of law by the claimant while acting within the
24 scope of employment that substantially affect the claimant's job
25 performance or that substantially harm the employer's ability to do
26 business.

27 (3) "Misconduct" does not include:

28 (a) Inefficiency, unsatisfactory conduct, or failure to perform
29 well as the result of inability or incapacity;

30 (b) Inadvertence or ordinary negligence in isolated instances;
31 ((~~or~~))

32 (c) Good faith errors in judgment or discretion; or

33 (d) Entering quarantine because of exposure to or contracting the
34 disease that is the subject of the declaration of the public health
35 emergency.

36 (4) "Gross misconduct" means a criminal act in connection with an
37 individual's work for which the individual has been convicted in a
38 criminal court, or has admitted committing, or conduct connected with
39 the individual's work that demonstrates a flagrant and wanton

1 disregard of and for the rights, title, or interest of the employer
2 or a fellow employee.

3 **Sec. 2.** RCW 50.20.010 and 2021 c 2 s 8 are each amended to read
4 as follows:

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

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

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

20 (c) The individual is able to work, and is available for work in
21 any trade, occupation, profession, or business for which the
22 individual is reasonably fitted.

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

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

38 (iii) For the purposes of this subsection, "customary trade
39 practices" includes compliance with an electrical apprenticeship

1 training program that includes a recognized referral system under
2 apprenticeship program standards approved by the Washington state
3 apprenticeship and training council;

4 (d) The individual has been unemployed for a waiting period of
5 one week;

6 (e) The individual participates in reemployment services if the
7 individual has been referred to reemployment services pursuant to the
8 profiling system established by the commissioner under RCW 50.20.011,
9 unless the commissioner determines that:

10 (i) The individual has completed such services; or

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

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

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

21 (3) (a) For any weeks of unemployment insurance benefits when the
22 one week waiting period is fully paid or fully reimbursed by the
23 federal government, subsection (1) (d) of this section is waived.

24 (b) For any weeks of unemployment insurance benefits when the one
25 week waiting period is partially paid or partially reimbursed by the
26 federal government, the department may, by rule, elect to waive
27 subsection (1) (d) of this section.

28 (4) During the weeks of a public health emergency, an unemployed
29 individual may also meet the requirements of subsection (1) (c) of
30 this section if:

31 (a) The unemployed individual is able to perform, available to
32 perform, and actively seeking suitable work which can be performed
33 for an employer from the individual's home; and

34 (b) The unemployed individual or another individual residing with
35 the unemployed individual is at higher risk of severe illness or
36 death from the disease that is the subject of the public health
37 emergency because the higher risk individual:

38 (i) Was in an age category that is defined as high risk for the
39 disease that is the subject of the public health emergency by:

40 (A) The federal centers for disease control and prevention;

1 (B) The department of health; or

2 (C) The equivalent agency in the state where the individual
3 resides; or

4 (ii) Has an underlying health condition, verified as required by
5 the department by rule, that is identified as a risk factor for the
6 disease that is the subject of the public health emergency by:

7 (A) The federal centers for disease control and prevention;

8 (B) The department of health; or

9 (C) The equivalent agency in the state where the individual
10 resides.

11 (5) During the weeks of a public health emergency, an unemployed
12 individual may also meet the requirements of subsection (1)(c) of
13 this section if the unemployed individual described in RCW
14 50.20.050(3) and 50.29.021(1)(c)(iii) is able to perform, available
15 to perform, and actively seeking suitable work which will commence
16 after quarantine or which can be performed for an employer from the
17 individual's home.

18 **Sec. 3.** RCW 50.20.050 and 2021 c 2 s 10 are each amended to read
19 as follows:

20 (1) With respect to separations that occur on or after September
21 6, 2009, and for separations that occur before April 4, 2021:

22 (a) A claimant shall be disqualified from benefits beginning with
23 the first day of the calendar week in which the claimant left work
24 voluntarily without good cause and thereafter for seven calendar
25 weeks and until the claimant obtains bona fide work in employment
26 covered by this title and earned wages in that employment equal to
27 seven times the claimant's weekly benefit amount. Good cause reasons
28 to leave work are limited to reasons listed in (b) of this
29 subsection.

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

34 (i) The duration of the work;

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

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

1 (b) A claimant has good cause and is not disqualified from
2 benefits under (a) of this subsection only under the following
3 circumstances:

4 (i) The claimant has left work to accept a bona fide offer of
5 bona fide work as described in (a) of this subsection;

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

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

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

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

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

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

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

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

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

38 (ix) The claimant left work because of illegal activities in the
39 claimant's worksite, the claimant reported such activities to the

1 employer, and the employer failed to end such activities within a
2 reasonable period of time;

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

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

10 (2) With respect to separations that occur on or after April 4,
11 2021:

12 (a) A claimant shall be disqualified from benefits beginning with
13 the first day of the calendar week in which the claimant has left
14 work voluntarily without good cause and thereafter for seven calendar
15 weeks and until the claimant has obtained bona fide work in
16 employment covered by this title and earned wages in that employment
17 equal to seven times the claimant's weekly benefit amount. Good cause
18 reasons to leave work are limited to reasons listed in (b) of this
19 subsection.

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

24 (i) The duration of the work;

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

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

29 (b) A claimant has good cause and is not disqualified from
30 benefits under (a) of this subsection only under the following
31 circumstances:

32 (i) The claimant has left work to accept a bona fide offer of
33 bona fide work as described in (a) of this subsection;

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

37 (A) The claimant made reasonable efforts to preserve the
38 claimant's employment status by requesting a leave of absence, by
39 having promptly notified the employer of the reason for the absence,
40 and by having promptly requested reemployment when again able to

1 assume employment. These alternatives need not be pursued, however,
2 when they would have been a futile act, including those instances
3 when the futility of the act was a result of a recognized labor/
4 management dispatch system; and

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

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

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

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

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

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

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

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

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

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

37 (xii) During a public health emergency:

38 (A) The claimant was unable to perform the claimant's work for
39 the employer from the claimant's home;

1 (B) The claimant is able to perform, available to perform, and
2 can actively seek suitable work which can be performed for an
3 employer from the claimant's home; and

4 (C) The claimant or another individual residing with the claimant
5 is at higher risk of severe illness or death from the disease that is
6 the subject of the public health emergency because the higher risk
7 individual:

8 (I) Was in an age category that is defined as high risk for the
9 disease that is the subject of the public health emergency by the
10 federal centers for disease control and prevention, the department of
11 health, or the equivalent agency in the state where the individual
12 resides; or

13 (II) Has an underlying health condition, verified as required by
14 the department by rule, that is identified as a risk factor for the
15 disease that is the subject of the public health emergency by the
16 federal centers for disease control and prevention, the department of
17 health, or the equivalent agency in the state where the individual
18 resides.

19 (3) With respect to claims that occur on or after July 4, 2021, a
20 claimant has good cause and is not disqualified from benefits under
21 subsection (2)(a) of this section under the following circumstances,
22 in addition to those listed under subsection (2)(b) of this section,
23 if, during a public health emergency, the claimant worked at a health
24 care facility as defined in RCW 9A.50.010, was directly involved in
25 the delivery of health services, and left work due to entering
26 quarantine because of exposure to or contracting the disease that is
27 the subject of the declaration of the public health emergency.

28 (4) Notwithstanding subsection (1) of this section, a claimant
29 who was simultaneously employed in full-time employment and part-time
30 employment and is otherwise eligible for benefits from the loss of
31 the full-time employment shall not be disqualified from benefits
32 because the claimant:

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

35 (b) Did not have prior knowledge that the claimant would be
36 separated from full-time employment.

37 **Sec. 4.** RCW 50.29.021 and 2021 c 2 s 16 are each amended to read
38 as follows:

1 (1) (a) An experience rating account shall be established and
2 maintained for each employer, except employers as described in RCW
3 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
4 payments in lieu of contributions, taxable local government employers
5 as described in RCW 50.44.035, and those employers who are required
6 to make payments in lieu of contributions, based on existing records
7 of the employment security department.

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

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

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

22 (ii) RCW 50.20.050 (1) (b) (v) through (x) or (2) (b) (v) through
23 (x); or

24 (iii) During a public health emergency, the claimant worked at a
25 health care facility as defined in RCW 9A.50.010, was directly
26 involved in the delivery of health services, and was terminated from
27 work due to entering quarantine because of exposure to or contracting
28 the disease that is the subject of the declaration of the public
29 health emergency.

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

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

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

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

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

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

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

17 (e) Benefits paid to an individual who qualifies for benefits
18 under RCW 50.20.050 (1)(b) (iv) or (xi) (~~(xii)~~), (2)(b) (iv), (xi), or
19 (xii), or (3), as applicable, shall not be charged to the experience
20 rating account of any contribution paying employer.

21 (f) Benefits paid that exceed the benefits that would have been
22 paid if the weekly benefit amount for the claim had been determined
23 as one percent of the total wages paid in the individual's base year
24 shall not be charged to the experience rating account of any
25 contribution paying employer. This subsection (2)(f) does not apply
26 to the calculation of contribution rates under RCW 50.29.025 for rate
27 year 2010 and thereafter.

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

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

36 (i)(i) Benefits paid during the one week waiting period when the
37 one week waiting period is fully paid or fully reimbursed by the
38 federal government shall not be charged to the experience rating
39 account of any contribution paying employer.

1 (ii) In the event the one week waiting period is partially paid
2 or partially reimbursed by the federal government, the department
3 may, by rule, elect to not charge, in full or in part, benefits paid
4 during the one week waiting period to the experience rating account
5 of any contribution paying employer.

6 (j) Benefits paid for all weeks starting with the week ending
7 March 28, 2020, and ending with the week ending May 30, 2020, shall
8 not be charged to the experience rating account of any contribution
9 paying employer.

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

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

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

20 (iii) Is unemployed as a result of closure or severe curtailment
21 of operation at the employer's plant, building, worksite, or other
22 facility. This closure must be for reasons directly attributable to a
23 catastrophic occurrence such as fire, flood, or other natural
24 disaster, or to the presence of any dangerous, contagious, or
25 infectious disease that is the subject of a public health emergency
26 at the employer's plant, building, worksite, or other facility;

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

34 (v) Continues to be employed on a regularly scheduled permanent
35 part-time basis by a base year employer and who qualified for two
36 consecutive unemployment claims where wages were attributable to at
37 least one employer who employed the individual in both base years.
38 Benefit charge relief ceases when the employment relationship between
39 the employer requesting relief and the claimant is terminated. This

1 subsection does not apply to shared work employers under chapter
2 50.60 RCW;

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

9 (vii) Worked for an employer for (~~twenty~~) 20 weeks or less, and
10 was laid off at the end of temporary employment when that employee
11 temporarily replaced a permanent employee receiving family or medical
12 leave benefits under Title 50A RCW, and the layoff is due to the
13 return of that permanent employee. This subsection (3)(a)(vii)
14 applies to claims with an effective date on or after January 1, 2020;
15 or

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

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

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

36 (5) An employer's experience rating account may not be relieved
37 of charges for a benefit payment and an employer who reimburses the
38 trust fund for benefit payments may not be credited for a benefit
39 payment if a benefit payment was made because the employer or
40 employer's agent failed to respond timely or adequately to a written

1 request of the department for information relating to the claim or
2 claims without establishing good cause for the failure and the
3 employer or employer's agent has a pattern of such failures. The
4 commissioner has the authority to determine whether the employer has
5 good cause under this subsection.

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

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

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

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

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

22 NEW SECTION. **Sec. 5.** If any part of sections 1 through 4 of
23 this act is found to be in conflict with federal requirements that
24 are a prescribed condition to the allocation of federal funds to the
25 state or the eligibility of employers in this state for federal
26 unemployment tax credits, the conflicting part of sections 1 through
27 4 of this act is inoperative solely to the extent of the conflict,
28 and the finding or determination does not affect the operation of the
29 remainder of sections 1 through 4 of this act. Rules adopted under
30 sections 1 through 4 of this act must meet federal requirements that
31 are a necessary condition to the receipt of federal funds by the
32 state or the granting of federal unemployment tax credits to
33 employers in this state.

34 NEW SECTION. **Sec. 6.** A new section is added to chapter 51.32
35 RCW to read as follows:

36 (1) For health care employees who are covered under this title,
37 there exists a prima facie presumption that any infectious or
38 contagious diseases which are the subject of a public health

1 emergency are occupational diseases under RCW 51.08.140 during a
2 public health emergency. There is a presumption that the health care
3 employee contracted or was exposed to the disease at the health care
4 facility.

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

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

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

15 (b) The employee was working from the employee's home or other
16 location not under the employer's control, on leave from the
17 employee's employment, or some combination thereof, for the period of
18 quarantine outlined for the disease immediately prior to the
19 employee's date of disease contraction or period of incapacity
20 resulting from exposure to the disease which is the subject of the
21 public health emergency.

22 (4) For health care employees whose claims are allowed under this
23 section, temporary total disability benefits as provided in RCW
24 51.32.090 shall be payable beginning the first day the worker is
25 directed to quarantine or is unable to work due to the exposure or
26 contraction of the disease, whichever comes first. If leave or
27 similar benefits are paid to the worker as part of a federal or state
28 program for these employees during the public health emergency, total
29 temporary disability benefits are not payable for the same period of
30 time covered by this federal or state program.

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

1 (b) When a determination involving the presumption established in
2 this section is appealed to any court and the final decision allows
3 the claim for benefits, the court shall order that all reasonable
4 costs of appeal, including attorneys' fees and witness fees, be paid
5 to the worker or the worker's beneficiary by the opposing party. If
6 the opposing party is a state fund employer or retrospective rating
7 group, the costs and fees are paid by the employer or retrospective
8 rating group.

9 (c) When reasonable costs of the appeal must be paid by the
10 department as the opposing party in a state fund case, the costs
11 shall be paid from the accident fund and charged to the costs of the
12 claim.

13 (6) Costs of claims allowed under this section shall not affect
14 the experience rating of employers insured by the state fund.

15 (7) For purposes of this section:

16 (a) "Health care employee" means an employee of any health care
17 facility or other organization that provides emergency or medical
18 services who may have direct contact with any person who has been
19 exposed to or tested positive for any infectious or contagious
20 diseases which are the subject of a public health emergency.

21 (b) "Health care facility" has the same meaning as in RCW
22 9A.50.010.

23 (c) "Public health emergency" means a declaration or order that
24 covers the jurisdiction where the employee was working on the date of
25 exposure concerning any dangerous, contagious, or infectious
26 diseases, including a pandemic, and is issued as follows:

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

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

31 (8) The presumption in subsection (1) of this section takes
32 effect on the day the national, regional, or state emergency is
33 declared and continues until this declaration is revoked.

34 (9) The provisions of RCW 51.28.055 concerning time limits for
35 filing claims for occupational disease apply to claims covered under
36 this section.

37 **Sec. 7.** RCW 51.52.130 and 2007 c 490 s 4 are each amended to
38 read as follows:

1 (1) If, on appeal to the superior or appellate court from the
2 decision and order of the board, said decision and order is reversed
3 or modified and additional relief is granted to a worker or
4 beneficiary, or in cases where a party other than the worker or
5 beneficiary is the appealing party and the worker's or beneficiary's
6 right to relief is sustained, a reasonable fee for the services of
7 the worker's or beneficiary's attorney shall be fixed by the court.

8 (a) In fixing the fee the court shall take into consideration the
9 fee or fees, if any, fixed by the director and the board for such
10 attorney's services before the department and the board. If the court
11 finds that the fee fixed by the director or by the board is
12 inadequate for services performed before the department or board, or
13 if the director or the board has fixed no fee for such services, then
14 the court shall fix a fee for the attorney's services before the
15 department, or the board, as the case may be, in addition to the fee
16 fixed for the services in the court.

17 (b) If in a worker or beneficiary appeal the decision and order
18 of the board is reversed or modified and if the accident fund or
19 medical aid fund is affected by the litigation, or if in an appeal by
20 the department or employer the worker or beneficiary's right to
21 relief is sustained, or in an appeal by a worker involving a state
22 fund employer with twenty-five employees or less, in which the
23 department does not appear and defend, and the board order in favor
24 of the employer is sustained, the attorney's fee fixed by the court,
25 for services before the court only, and the fees of medical and other
26 witnesses and the costs shall be payable out of the administrative
27 fund of the department.

28 (c) In the case where the employer or other person or persons
29 aggrieved by the decision of the board appeal and the worker or
30 beneficiary's right to relief is sustained, the attorneys' fees fixed
31 by the court, for services before the court only, and the fees of
32 medical and other witnesses and the costs shall be payable directly
33 by the person or persons filing the appeal.

34 (d) In the case of self-insured employers, the attorney fees
35 fixed by the court, for services before the court only, and the fees
36 of medical and other witnesses and the costs shall be payable
37 directly by the self-insured employer.

38 (2) In an appeal to the superior or appellate court involving the
39 presumption established under RCW 51.32.185, the attorney's fee and
40 costs shall be payable as set forth under RCW 51.32.185.

1 (3) In an appeal to the superior or appellate court involving the
2 presumption established under section 6 of this act, the attorneys'
3 fees and costs shall be payable as set forth under section 6 of this
4 act.

5 NEW SECTION. **Sec. 8.** A new section is added to chapter 51.32
6 RCW to read as follows:

7 (1) Where an appealing party, other than the department or a
8 self-insured employer, is ordered to pay attorneys' fees and costs
9 and that party fails, refuses, or neglects to comply with the award,
10 which has become final and is not subject to review or appeal, the
11 director or any person entitled to compensation under the order may
12 institute proceedings for injunctive or other appropriate relief for
13 enforcement of the order. These proceedings may be instituted in the
14 superior court for the county in which the claimant resides, or, if
15 the claimant is not then a resident of this state, in the superior
16 court for the county in which that party may be served with process.

17 (2) The court shall ensure compliance to the order by proper
18 means, enjoining compliance upon the person obligated to comply with
19 the compensation order. The court may issue such writs and processes
20 as are necessary to carry out its orders.

21 (3) A proceeding under this section does not preclude other
22 methods of enforcement provided for in this title.

23 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of
25 the state government and its existing public institutions, and takes
26 effect immediately.

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