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**SENATE BILL 5873**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senators Keiser, Billig, Conway, Das, Dhingra, King, Kuderer, Liiias, Lovick, Mullet, Nguyen, Nobles, Randall, Robinson, Rolfes, Stanford, and C. Wilson

Read first time 01/14/22. Referred to Committee on Ways & Means.

1 AN ACT Relating to unemployment insurance, family leave, and  
2 medical leave premiums; amending RCW 50.29.025, 50.29.070, and  
3 50A.10.030; and declaring an emergency.

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

5 **Sec. 1.** RCW 50.29.025 and 2021 c 2 s 17 are each amended to read  
6 as follows:

7 (1) The contribution rate for each employer subject to  
8 contributions under RCW 50.24.010 shall be the sum of the array  
9 calculation factor rate and the graduated social cost factor rate  
10 determined under this subsection, and the solvency surcharge  
11 determined under RCW 50.29.041, if any.

12 (a) The array calculation factor rate shall be determined as  
13 follows:

14 (i) An array shall be prepared, listing all qualified employers  
15 in ascending order of their benefit ratios. The array shall show for  
16 each qualified employer: (A) Identification number; (B) benefit  
17 ratio; and (C) taxable payrolls for the four consecutive calendar  
18 quarters immediately preceding the computation date and reported to  
19 the employment security department by the cut-off date.

20 (ii) Each employer in the array shall be assigned to one of forty  
21 rate classes according to his or her benefit ratio as follows, and,

1 except as provided in RCW 50.29.026, the array calculation factor  
 2 rate for each employer in the array shall be the rate specified in  
 3 the rate class to which the employer has been assigned:

	Benefit Ratio		Rate	Rate
	At least	Less than	Class	(percent)
4				
5				
6				
7		0.000001	1	0.00
8	0.000001	0.001250	2	0.11
9	0.001250	0.002500	3	0.22
10	0.002500	0.003750	4	0.33
11	0.003750	0.005000	5	0.43
12	0.005000	0.006250	6	0.54
13	0.006250	0.007500	7	0.65
14	0.007500	0.008750	8	0.76
15	0.008750	0.010000	9	0.88
16	0.010000	0.011250	10	1.01
17	0.011250	0.012500	11	1.14
18	0.012500	0.013750	12	1.28
19	0.013750	0.015000	13	1.41
20	0.015000	0.016250	14	1.54
21	0.016250	0.017500	15	1.67
22	0.017500	0.018750	16	1.80
23	0.018750	0.020000	17	1.94
24	0.020000	0.021250	18	2.07
25	0.021250	0.022500	19	2.20
26	0.022500	0.023750	20	2.38
27	0.023750	0.025000	21	2.50
28	0.025000	0.026250	22	2.63
29	0.026250	0.027500	23	2.75
30	0.027500	0.028750	24	2.88
31	0.028750	0.030000	25	3.00
32	0.030000	0.031250	26	3.13
33	0.031250	0.032500	27	3.25

1	0.032500	0.033750	28	3.38
2	0.033750	0.035000	29	3.50
3	0.035000	0.036250	30	3.63
4	0.036250	0.037500	31	3.75
5	0.037500	0.040000	32	4.00
6	0.040000	0.042500	33	4.25
7	0.042500	0.045000	34	4.50
8	0.045000	0.047500	35	4.75
9	0.047500	0.050000	36	5.00
10	0.050000	0.052500	37	5.15
11	0.052500	0.055000	38	5.25
12	0.055000	0.057500	39	5.30
13	0.057500		40	5.40

14 (b) The graduated social cost factor rate shall be determined as  
15 follows:

16 (i) (A) Except as provided in (b) (i) (B) and (C) of this  
17 subsection, the commissioner shall calculate the flat social cost  
18 factor for a rate year by dividing the total social cost by the total  
19 taxable payroll. The division shall be carried to the second decimal  
20 place with the remaining fraction disregarded unless it amounts to  
21 five hundredths or more, in which case the second decimal place shall  
22 be rounded to the next higher digit. The flat social cost factor  
23 shall be expressed as a percentage.

24 (B) (I) If, on the cut-off date, the balance in the unemployment  
25 compensation fund is determined by the commissioner to be an amount  
26 that will provide more than ten months of unemployment benefits, the  
27 commissioner shall calculate the flat social cost factor for the rate  
28 year immediately following the cut-off date by reducing the total  
29 social cost by the dollar amount that represents the number of months  
30 for which the balance in the unemployment compensation fund on the  
31 cut-off date will provide benefits above ten months and dividing the  
32 result by the total taxable payroll. However, the calculation under  
33 this subsection (1) (b) (i) (B) for a rate year may not result in a flat  
34 social cost factor that is more than four-tenths lower than the  
35 calculation under (b) (i) (A) of this subsection for that rate year.  
36 For rate year 2011 and thereafter, the calculation may not result in

1 a flat social cost factor that is more than one and twenty-two one-  
2 hundredths percent except for rate year 2021 the calculation may not  
3 result in a flat social cost factor that is more than five-tenths  
4 percent, for rate year 2022 the calculation may not result in a flat  
5 social cost factor that is more than (~~seventy-five one-hundredths~~)  
6 five-tenths percent, for rate year 2023 the calculation may not  
7 result in a flat social cost factor that is more than (~~eight-~~  
8 ~~tenths~~) seven-tenths percent, for rate year 2024 the calculation may  
9 not result in a flat social cost factor that is more than eighty-five  
10 one-hundredths percent, and for rate year 2025 the calculation may  
11 not result in a flat social cost factor that is more than nine-tenths  
12 percent.

13 (II) If, on the cut-off date, the balance in the unemployment  
14 compensation fund is determined by the commissioner to be an amount  
15 that will provide ten months of unemployment benefits or less, the  
16 flat social cost factor for the rate year immediately following the  
17 cut-off date may not increase by more than fifty percent over the  
18 previous rate year or may not exceed one and twenty-two one-  
19 hundredths percent, whichever is greater.

20 (III) For the purposes of this subsection (1)(b), the  
21 commissioner shall determine the number of months of unemployment  
22 benefits in the unemployment compensation fund using the benefit cost  
23 rate for the average of the three highest calendar benefit cost rates  
24 in the twenty consecutive completed calendar years immediately  
25 preceding the cut-off date or a period of consecutive calendar years  
26 immediately preceding the cut-off date that includes three  
27 recessions, if longer.

28 (C) The minimum flat social cost factor calculated under this  
29 subsection (1)(b) shall be six-tenths of one percent, except that if  
30 the balance in the unemployment compensation fund is determined by  
31 the commissioner to be an amount that will provide:

32 (I) At least ten months but less than eleven months of  
33 unemployment benefits, the minimum shall be five-tenths of one  
34 percent; or

35 (II) At least eleven months but less than twelve months of  
36 unemployment benefits, the minimum shall be forty-five hundredths of  
37 one percent; or

38 (III) At least twelve months but less than thirteen months of  
39 unemployment benefits, the minimum shall be four-tenths of one  
40 percent; or

1 (IV) At least thirteen months but less than fifteen months of  
2 unemployment benefits, the minimum shall be thirty-five hundredths of  
3 one percent; or

4 (V) At least fifteen months but less than seventeen months of  
5 unemployment benefits, the minimum shall be twenty-five hundredths of  
6 one percent; or

7 (VI) At least seventeen months but less than eighteen months of  
8 unemployment benefits, the minimum shall be fifteen hundredths of one  
9 percent; or

10 (VII) At least eighteen months of unemployment benefits, the  
11 minimum shall be fifteen hundredths of one percent through year  
12 2011 and shall be zero thereafter.

13 (ii) The graduated social cost factor rate for each employer in  
14 the array is the flat social cost factor multiplied by the percentage  
15 specified as follows for the rate class to which the employer has  
16 been assigned in (a)(ii) of this subsection, except that the sum of  
17 an employer's array calculation factor rate and the graduated social  
18 cost factor rate may not exceed six percent or, for employers whose  
19 North American industry classification system code is within "111,"  
20 "112," "1141," "115," "3114," "3117," "42448," or "49312," may not  
21 exceed five and four-tenths percent:

22 (A) Rate class 1 - 40 percent;

23 (B) Rate class 2 - 44 percent;

24 (C) Rate class 3 - 48 percent;

25 (D) Rate class 4 - 52 percent;

26 (E) Rate class 5 - 56 percent;

27 (F) Rate class 6 - 60 percent;

28 (G) Rate class 7 - 64 percent;

29 (H) Rate class 8 - 68 percent;

30 (I) Rate class 9 - 72 percent;

31 (J) Rate class 10 - 76 percent;

32 (K) Rate class 11 - 80 percent;

33 (L) Rate class 12 - 84 percent;

34 (M) Rate class 13 - 88 percent;

35 (N) Rate class 14 - 92 percent;

36 (O) Rate class 15 - 96 percent;

37 (P) Rate class 16 - 100 percent;

38 (Q) Rate class 17 - 104 percent;

39 (R) Rate class 18 - 108 percent;

40 (S) Rate class 19 - 112 percent;

1 (T) Rate class 20 - 116 percent; and

2 (U) Rate classes 21 through 40 - 120 percent.

3 (iii) For rate year 2023, for any employer with 10 or fewer  
4 employees as reported on the employer's fourth quarter report to the  
5 department for 2021 and whose rate class is greater than rate class  
6 7, the employer's rate class, only for purposes of the rate classes  
7 in (b) (ii) (A) through (U) of this subsection (1), is rate class 7.

8 (iv) For the purposes of this section:

9 (A) "Total social cost" means the amount calculated by  
10 subtracting the array calculation factor contributions paid by all  
11 employers with respect to the four consecutive calendar quarters  
12 immediately preceding the computation date and paid to the employment  
13 security department by the cut-off date from the total unemployment  
14 benefits paid to claimants in the same four consecutive calendar  
15 quarters.

16 (B) "Total taxable payroll" means the total amount of wages  
17 subject to tax, as determined under RCW 50.24.010, for all employers  
18 in the four consecutive calendar quarters immediately preceding the  
19 computation date and reported to the employment security department  
20 by the cut-off date.

21 (c) For employers who do not meet the definition of "qualified  
22 employer" by reason of failure to pay contributions when due:

23 (i) (A) For an employer who does not enter into an approved  
24 agency-deferred payment contract as described in (c) (i) (B) or (C) of  
25 this subsection, the array calculation factor rate shall be the rate  
26 it would have been if the employer had not been delinquent in payment  
27 plus an additional one percent or, if the employer is delinquent in  
28 payment for a second or more consecutive year, an additional two  
29 percent;

30 (B) For an employer who enters an approved agency-deferred  
31 payment contract by September 30th of the previous rate year, the  
32 array calculation factor rate shall be the rate it would have been if  
33 the employer had not been delinquent in payment;

34 (C) For an employer who enters an approved agency-deferred  
35 payment contract after September 30th of the previous rate year, but  
36 within thirty days of the date the department sent its first tax rate  
37 notice, the array calculation factor rate shall be the rate it would  
38 have been had the employer not been delinquent in payment plus an  
39 additional one-half of one percent or, if the employer is delinquent

1 in payment for a second or more consecutive year, an additional one  
2 and one-half percent;

3 (D) For an employer who enters an approved agency-deferred  
4 payment contract as described in (c)(i)(B) or (C) of this subsection,  
5 but who fails to make any one of the succeeding deferred payments or  
6 fails to submit any succeeding tax report and payment in a timely  
7 manner, the array calculation factor rate shall immediately revert to  
8 the applicable array calculation factor rate under (c)(i)(A) of this  
9 subsection; and

10 (ii) The social cost factor rate shall be the social cost factor  
11 rate assigned to rate class 40 under (b)(ii)(~~(A)~~) of this  
12 subsection.

13 (d) For all other employers not qualified to be in the array:

14 (i) The array calculation factor rate shall be a rate equal to  
15 the average industry array calculation factor rate as determined by  
16 the commissioner, multiplied by the history factor, but not less than  
17 one percent or more than the array calculation factor rate in rate  
18 class 40;

19 (ii) The social cost factor rate shall be a rate equal to the  
20 average industry social cost factor rate as determined by the  
21 commissioner, multiplied by the history factor, but not more than the  
22 social cost factor rate assigned to rate class 40 under (b)(ii) of  
23 this subsection; and

24 (iii) The history factor shall be based on the total amounts of  
25 benefits charged and contributions paid in the three fiscal years  
26 ending prior to the computation date by employers not qualified to be  
27 in the array, other than employers in (c) of this subsection, who  
28 were first subject to contributions in the calendar year ending three  
29 years prior to the computation date. The commissioner shall calculate  
30 the history ratio by dividing the total amount of benefits charged by  
31 the total amount of contributions paid in this three-year period by  
32 these employers. The division shall be carried to the second decimal  
33 place with the remaining fraction disregarded unless it amounts to  
34 five one-hundredths or more, in which case the second decimal place  
35 shall be rounded to the next higher digit. The commissioner shall  
36 determine the history factor according to the history ratio as  
37 follows:

	History	History
	Ratio	Factor
		(percent)
	At least	Less than
5	(A)	.95 90
6	(B)	.95 1.05 100
7	(C)	1.05 115

8 (2) Assignment of employers by the commissioner to industrial  
9 classification, for purposes of this section, shall be in accordance  
10 with established classification practices found in the North American  
11 industry classification system code.

12 **Sec. 2.** RCW 50.29.070 and 2003 2nd sp.s. c 4 s 19 are each  
13 amended to read as follows:

14 (1) Within a reasonable time after the computation date each  
15 employer shall be notified of the employer's rate of contribution as  
16 determined for the succeeding rate year and factors used in the  
17 calculation. Beginning with rate year 2005, the notice must include  
18 the amount of the contribution rate that is attributable to each  
19 component of the rate under RCW 50.29.025(~~(+2)~~) (1).

20 (2) Any employer dissatisfied with the benefit charges made to  
21 the employer's account for the twelve-month period immediately  
22 preceding the computation date or with his or her determined rate may  
23 file a request for review and redetermination with the commissioner  
24 within thirty days of the mailing of the notice to the employer,  
25 showing the reason for such request. Should such request for review  
26 and redetermination be denied, the employer may, within thirty days  
27 of the mailing of such notice of denial, file with the appeal  
28 tribunal a petition for hearing which shall be heard in the same  
29 manner as a petition for denial of refund. The appellate procedure  
30 prescribed by this title for further appeal shall apply to all  
31 denials of review and redetermination under this section.

32 **Sec. 3.** RCW 50A.10.030 and 2019 c 13 s 21 are each amended to  
33 read as follows:

34 (1) (a) (~~Beginning January 1, 2019, the~~) The department shall  
35 assess for each individual in employment with an employer and for



1 each individual electing coverage a premium based on the amount of  
2 the individual's wages subject to subsection (4) of this section.

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

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

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

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

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

17 ~~((e))~~ (b) For medical leave premiums, an employer may deduct  
18 from the wages of each employee up to forty-five percent of the full  
19 amount of the premium required.

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

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

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

30 (b) If an employer with fewer than fifty employees elects to pay  
31 the premiums, the employer is then eligible for assistance under RCW  
32 50A.24.010.

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

1 thousandths or more, in which case the fourth decimal place shall be  
2 rounded to the next higher digit. If the account balance ratio is:

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

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

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

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

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

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

19 (7) For calendar year 2022:

20 (a) The total premium rate shall be six-tenths of one percent of  
21 the individual's wages subject to subsection (4) of this section;

22 (b) The employer portion of the total premium is 26.78 percent;

23 (c) Thirty-one percent of the total premium shall be paid with  
24 general fund state, subject to appropriation to the department; and

25 (d) (i) If funds are appropriated to the department as provided in  
26 (c) of this subsection, 42.22 percent of the total premium shall be  
27 deducted from the wages of each employee and paid in by the employer;  
28 and

29 (ii) If funds are not appropriated as provided in (c) of this  
30 subsection, 73.22 percent of the total premium shall be deducted from  
31 the wages of each employee and paid in by the employer.

32 (8) Beginning January 1, 2021, if the account balance ratio  
33 calculated in subsection (6) of this section is below five hundredths  
34 of one percent, the commissioner must assess a solvency surcharge at  
35 the lowest rate necessary to provide revenue to pay for the  
36 administrative and benefit costs of family and medical leave, for the  
37 calendar year, as determined by the commissioner. The solvency  
38 surcharge shall be at least one-tenth of one percent and no more than  
39 six-tenths of one percent and be added to the total premium rate for  
40 family and medical leave benefits.

1       (~~(8)~~) (9)(a) The employer must collect from the employees the  
2 premiums and any surcharges provided under this section through  
3 payroll deductions and remit the amounts collected to the department.

4       (b) In collecting employee premiums through payroll deductions,  
5 the employer shall act as the agent of the employees and shall remit  
6 the amounts to the department as required by this title.

7       (c) On September 30th of each year, the department shall average  
8 the number of employees reported by an employer over the last four  
9 completed calendar quarters to determine the size of the employer for  
10 the next calendar year for the purposes of this section and RCW  
11 50A.24.010.

12       (~~(9)~~) (10) Premiums shall be collected in the manner and at  
13 such intervals as provided in this title and directed by the  
14 department.

15       (~~(10)~~) (11) Premiums collected under this section are placed in  
16 trust for the employees and employers that the program is intended to  
17 assist.

18       (~~(11)~~) (12) A city, code city, town, county, or political  
19 subdivision may not enact a charter, ordinance, regulation, rule, or  
20 resolution:

21       (a) Creating a paid family or medical leave insurance program  
22 that alters or amends the requirements of this title for any private  
23 employer;

24       (b) Providing for local enforcement of the provisions of this  
25 title; or

26       (c) Requiring private employers to supplement duration of leave  
27 or amount of wage replacement benefits provided under this title.

28       NEW SECTION.   **Sec. 4.** This act is necessary for the immediate  
29 preservation of the public peace, health, or safety, or support of  
30 the state government and its existing public institutions, and takes  
31 effect immediately.

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