

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5190

Chapter 251, Laws of 2021

67th Legislature
2021 Regular Session

HEALTH CARE WORKERS—PRESUMPTIVE BENEFITS—PUBLIC HEALTH EMERGENCY

EFFECTIVE DATE: May 11, 2021

Passed by the Senate April 19, 2021
Yeas 37 Nays 12

DENNY HECK

President of the Senate

Passed by the House April 8, 2021
Yeas 84 Nays 14

Laurie Jinkins

**Speaker of the House of
Representatives**

Approved May 11, 2021 12:13 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5190** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

May 12, 2021

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5190

AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

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, and 50.29.021; adding a new section to chapter
4 51.32 RCW; creating a new section; and declaring an emergency.

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

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

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

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

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

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

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

18 (d) Carelessness or negligence of such degree or recurrence to
19 show an intentional or substantial disregard of the employer's
20 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) (i) A health care worker who left work for the period of
34 quarantine consistent with the recommended guidance from the United
35 States centers for disease control and prevention or subject to the
36 direction of the state or local health jurisdiction because of
37 exposure to or contracting the disease that is the subject of the
38 declaration of the public health emergency.

39 (ii) For purposes of this subsection, "health care worker" means
40 an individual who worked at a health care facility as defined in RCW

1 9A.50.010, and was directly involved in the delivery of health
2 services.

3 (4) "Gross misconduct" means a criminal act in connection with an
4 individual's work for which the individual has been convicted in a
5 criminal court, or has admitted committing, or conduct connected with
6 the individual's work that demonstrates a flagrant and wanton
7 disregard of and for the rights, title, or interest of the employer
8 or a fellow employee.

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

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

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

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

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

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

36 (ii) Until June 30, 2021, an individual under quarantine or
37 isolation, as defined by the department of health, as directed by a
38 public health official during the novel coronavirus outbreak pursuant
39 to the gubernatorial declaration of emergency of February 29, 2020,

1 will meet the requirements of this subsection (1)(c) if the
2 individual is able to perform, available to perform, and actively
3 seeking work which can be performed while under quarantine or
4 isolation.

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

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

12 (e) The individual participates in reemployment services if the
13 individual has been referred to reemployment services pursuant to the
14 profiling system established by the commissioner under RCW 50.20.011,
15 unless the commissioner determines that:

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

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

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

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

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

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

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

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

1 (b) The unemployed individual or another individual residing with
2 the unemployed individual is at higher risk of severe illness or
3 death from the disease that is the subject of the public health
4 emergency because the higher risk individual:

5 (i) Was in an age category that is defined as high risk 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; or

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

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

15 (B) The department of health; or

16 (C) The equivalent agency in the state where the individual
17 resides.

18 (5)(a) During the weeks of a public health emergency, an
19 unemployed health care worker may also meet the requirements of
20 subsection (1)(c) of this section if the unemployed health care
21 worker described in RCW 50.20.050(3) and 50.29.021(1)(c)(iii) is able
22 to perform, available to perform, and actively seeking suitable work
23 which will commence after quarantine or which can be performed for an
24 employer from the individual's home.

25 (b) For purposes of this subsection, "health care worker" means
26 an individual who worked at a health care facility as defined in RCW
27 9A.50.010, and was directly involved in the delivery of health
28 services.

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

31 (1) With respect to separations that occur on or after September
32 6, 2009, and for separations that occur before April 4, 2021:

33 (a) A claimant shall be disqualified from benefits beginning with
34 the first day of the calendar week in which the claimant left work
35 voluntarily without good cause and thereafter for seven calendar
36 weeks and until the claimant obtains bona fide work in employment
37 covered by this title and earned wages in that employment equal to
38 seven times the claimant's weekly benefit amount. Good cause reasons

1 to leave work are limited to reasons listed in (b) of this
2 subsection.

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

7 (i) The duration of the work;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (2) With respect to separations that occur on or after April 4,
22 2021:

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

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

35 (i) The duration of the work;

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

38 (iii) The level of skill required for the work in light of the
39 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 made reasonable efforts to preserve the
10 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 individual'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;

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; or

10 (xii) During a public health emergency:

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

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

16 (C) The claimant or another individual residing with the claimant
17 is at higher risk of severe illness or death from the disease that is
18 the subject of the public health emergency because the higher risk
19 individual:

20 (I) Was in an age category that is defined as high risk for the
21 disease that is the subject of the public health emergency by the
22 federal centers for disease control and prevention, the department of
23 health, or the equivalent agency in the state where the individual
24 resides; or

25 (II) Has an underlying health condition, verified as required by
26 the department by rule, that is identified as a risk factor for the
27 disease that is the subject of the public health emergency by the
28 federal centers for disease control and prevention, the department of
29 health, or the equivalent agency in the state where the individual
30 resides.

31 (3) With respect to claims that occur on or after July 4, 2021, a
32 claimant has good cause and is not disqualified from benefits under
33 subsection (2)(a) of this section under the following circumstances,
34 in addition to those listed under subsection (2)(b) of this section,
35 if, during a public health emergency, the claimant worked at a health
36 care facility as defined in RCW 9A.50.010, was directly involved in
37 the delivery of health services, and left work for the period of
38 quarantine consistent with the recommended guidance from the United
39 States centers for disease control and prevention or subject to the
40 direction of the state or local health jurisdiction because of

1 exposure to or contracting the disease that is the subject of the
2 declaration of the public health emergency.

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

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

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

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

14 (1)(a) An experience rating account shall be established and
15 maintained for each employer, except employers as described in RCW
16 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
17 payments in lieu of contributions, taxable local government employers
18 as described in RCW 50.44.035, and those employers who are required
19 to make payments in lieu of contributions, based on existing records
20 of the employment security department.

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

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

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

35 (ii) RCW 50.20.050 (1)(b)(v) through (x) or (2)(b)(v) through
36 (x); or

37 (iii) During a public health emergency, the claimant worked at a
38 health care facility as defined in RCW 9A.50.010, was directly
39 involved in the delivery of health services, and was terminated from

1 work due to entering quarantine because of exposure to or contracting
2 the disease that is the subject of the declaration of the public
3 health emergency.

4 (2) The legislature finds that certain benefit payments, in whole
5 or in part, should not be charged to the experience rating accounts
6 of employers except those employers described in RCW 50.44.010,
7 50.44.030, and 50.50.030 who have properly elected to make payments
8 in lieu of contributions, taxable local government employers
9 described in RCW 50.44.035, and those employers who are required to
10 make payments in lieu of contributions, as follows:

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

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

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

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

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

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

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

35 (f) Benefits paid that exceed the benefits that would have been
36 paid if the weekly benefit amount for the claim had been determined
37 as one percent of the total wages paid in the individual's base year
38 shall not be charged to the experience rating account of any
39 contribution paying employer. This subsection (2)(f) does not apply

1 to the calculation of contribution rates under RCW 50.29.025 for rate
2 year 2010 and thereafter.

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

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

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

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

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

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

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

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

34 (iii) Is unemployed as a result of closure or severe curtailment
35 of operation at the employer's plant, building, worksite, or other
36 facility. This closure must be for reasons directly attributable to a
37 catastrophic occurrence such as fire, flood, or other natural
38 disaster, or to the presence of any dangerous, contagious, or
39 infectious disease that is the subject of a public health emergency
40 at the employer's plant, building, worksite, or other facility;

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

8 (v) Continues to be employed on a regularly scheduled permanent
9 part-time basis by a base year employer and who qualified for two
10 consecutive unemployment claims where wages were attributable to at
11 least one employer who employed the individual in both base years.
12 Benefit charge relief ceases when the employment relationship between
13 the employer requesting relief and the claimant is terminated. This
14 subsection does not apply to shared work employers under chapter
15 50.60 RCW;

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

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

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

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

38 (4) When a benefit claim becomes invalid due to an amendment or
39 adjustment of a report where the employer failed to report or
40 inaccurately reported hours worked or remuneration paid, or both, all

1 benefits paid will be charged to the experience rating account of the
2 contribution paying employer or employers that originally filed the
3 incomplete or inaccurate report or reports. An employer who
4 reimburses the trust fund for benefits paid to workers and who fails
5 to report or inaccurately reported hours worked or remuneration paid,
6 or both, shall reimburse the trust fund for all benefits paid that
7 are based on the originally filed incomplete or inaccurate report or
8 reports.

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

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

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

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

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

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

35 NEW SECTION. **Sec. 5.** If any part of sections 1 through 4 of
36 this act is found to be in conflict with federal requirements that
37 are a prescribed condition to the allocation of federal funds to the
38 state or the eligibility of employers in this state for federal
39 unemployment tax credits, the conflicting part of sections 1 through

1 4 of this act is inoperative solely to the extent of the conflict,
2 and the finding or determination does not affect the operation of the
3 remainder of sections 1 through 4 of this act. Rules adopted under
4 sections 1 through 4 of this act must meet federal requirements that
5 are a necessary condition to the receipt of federal funds by the
6 state or the granting of federal unemployment tax credits to
7 employers in this state.

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

10 (1) For health care employees who are covered under this title,
11 there exists a prima facie presumption that any infectious or
12 contagious diseases which are the subject of a public health
13 emergency are occupational diseases under RCW 51.08.140 during a
14 public health emergency.

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

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

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

25 (b) The employee was working from the employee's home or other
26 location not under the employer's control, on leave from the
27 employee's employment, or some combination thereof, for the period of
28 quarantine outlined for the disease immediately prior to the
29 employee's date of disease contraction or period of incapacity
30 resulting from exposure to the disease which is the subject of the
31 public health emergency.

32 (4) (a) RCW 51.32.090(7) does not apply to an occupational disease
33 under this section except that no worker shall receive compensation
34 for or during the day on which the occupational disease was
35 contracted. For the purposes of this subsection (4), the day on which
36 the occupational disease was contracted is whichever date occurs
37 first of the following:

38 (i) The date that the worker first missed work due to symptoms of
39 the infectious or contagious disease;

1 (ii) The date the worker was quarantined by a medical provider or
2 public health official; or

3 (iii) The date the worker received a positive test result
4 confirming contraction of the infectious or contagious disease.

5 (b) If leave or similar benefits are paid to the worker as part
6 of a federal or state program for these employees during the public
7 health emergency, total temporary disability benefits are not payable
8 for the same period of time covered by this federal or state program.

9 (5) Costs of claims allowed under this section shall not affect
10 the experience rating of employers insured by the state fund. When
11 calculating assessments due to the department for which total claim
12 costs are the basis, self-insured employers and self-insurance
13 hospital groups formed under RCW 51.14.150 and 51.14.160 may deduct
14 the cost of payments made under this section from the total of all
15 claim costs reported.

16 (6) For purposes of this section:

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

23 (b) "Health care facility" has the same meaning as in RCW
24 9A.50.010.

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

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

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

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

36 (8) The provisions of RCW 51.28.055 concerning time limits for
37 filing claims for occupational disease apply to claims covered under
38 this section.

1 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of
3 the state government and its existing public institutions, and takes
4 effect immediately.

Passed by the Senate April 19, 2021.

Passed by the House April 8, 2021.

Approved by the Governor May 11, 2021.

Filed in Office of Secretary of State May 12, 2021.

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