

ESHB 1893 - S COMM AMD

By Committee on Labor & Commerce

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 50.20.090 and 1988 c 83 s 1 are each amended to
4 read as follows:

5 (1) An individual shall be disqualified for benefits for any week
6 with respect to which the commissioner finds that the individual's
7 unemployment is (~~+~~

8 ~~(a) Due~~) due to a strike at the factory, establishment, or other
9 premises at which the individual is or was last employed (~~+~~

10 ~~(b) Due to a lockout by his or her employer who is a member of a~~
11 ~~multi-employer bargaining unit and who has locked out the employees~~
12 ~~at the factory, establishment, or other premises at which the~~
13 ~~individual is or was last employed after one member of the multi-~~
14 ~~employer bargaining unit has been struck by its employees as a result~~
15 ~~of the multi-employer bargaining process)).~~

16 (2) Subsection (1) of this section shall not apply if it is shown
17 to the satisfaction of the commissioner that:

18 (a) The individual is not participating in or financing or
19 directly interested in the strike (~~or lockout~~) that caused the
20 individual's unemployment; and

21 (b) The individual does not belong to a grade or class of workers
22 of which, immediately before the commencement of the strike (~~or~~
23 ~~lockout~~), there were members employed at the premises at which the
24 strike (~~or lockout~~) occurs, any of whom are participating in or
25 financing or directly interested in the strike (~~or lockout~~):
26 PROVIDED, That if in any case separate branches of work which are
27 commonly conducted as separate businesses in separate premises are
28 conducted in separate departments of the same premises, each such
29 department shall, for the purpose of this (~~subdivision~~) subsection,
30 be deemed to be a separate factory, establishment, or other premises.

1 (3)(a) Any disqualification imposed under this section shall end
2 (~~when~~) on the earlier of:

3 (i) The second Sunday following the first date of the strike,
4 provided that the strike is not found to be prohibited by federal or
5 state law in a final judgment, in which case the disqualification
6 would resume as of the date of the judgment; or

7 (ii) The date the strike (~~or lockout~~) is terminated.

8 (b) When the disqualification ends, the individual is subject to
9 the one week waiting period as provided in RCW 50.20.010 and any
10 benefits must be calculated in accordance with this chapter. However,
11 if an individual is unemployed due to a strike at the separating
12 employer's factory, establishment, or other premises at which the
13 individual is or was last employed, the individual may receive weekly
14 benefits for no more than four calendar weeks, subject to other
15 limitations provided in this title.

16 **Sec. 2.** RCW 50.29.021 and 2023 c 451 s 2 and 2023 c 240 s 3 are
17 each reenacted and amended to read as follows:

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

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

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

35 (i) The individual qualifies for benefits under RCW 50.20.050
36 (1)(b)(i) or (2)(b)(i), as applicable, and became unemployed after
37 having worked and earned wages in the bona fide work;

38 (ii) The individual qualifies for benefits under RCW 50.20.050
39 (1)(b)(v) through (x) or (2)(b)(v) through (x); (~~or~~)

1 (iii) During a public health emergency, the claimant worked at a
2 health care facility as defined in RCW 9A.50.010, was directly
3 involved in the delivery of health services, and was terminated from
4 work due to entering quarantine because of exposure to or contracting
5 the disease that is the subject of the declaration of the public
6 health emergency; or

7 (iv) The individual's unemployment is due to a strike at the
8 separating employer's factory, establishment, or other premises at
9 which the individual is or was last employed.

10 (2) The legislature finds that certain benefit payments, in whole
11 or in part, should not be charged to the experience rating accounts
12 of employers except those employers described in RCW 50.44.010,
13 50.44.030, and 50.50.030 who have properly elected to make payments
14 in lieu of contributions, taxable local government employers
15 described in RCW 50.44.035, and those employers who are required to
16 make payments in lieu of contributions, as follows:

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

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

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

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

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

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

37 (e) Benefits paid to an individual who qualifies for benefits
38 under RCW 50.20.050(1)(b) (iv) or (xi), (2)(b)(ii), only for
39 separation that was necessary because the care for a child or a
40 vulnerable adult in the claimant's care is inaccessible, (iv), (xi),

1 (xii), or (xiii), or (3), as applicable, shall not be charged to the
2 experience rating account of any contribution paying employer.

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

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

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

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

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

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

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

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

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

1 (iii) Is unemployed as a result of closure or severe curtailment
2 of operation at the employer's plant, building, worksite, or other
3 facility. This closure must be for reasons directly attributable to a
4 catastrophic occurrence such as fire, flood, or other natural
5 disaster, or to the presence of any dangerous, contagious, or
6 infectious disease that is the subject of a public health emergency
7 at the employer's plant, building, worksite, or other facility;

8 (iv) Continues to be employed by the employer seeking relief and:
9 (A) The employer furnished part-time work to the individual during
10 the base year; (B) the individual has become eligible for benefits
11 because of loss of employment with one or more other employers; and
12 (C) the employer has continued to furnish or make available part-time
13 work to the individual in substantially the same amount as during the
14 individual's base year. This subsection does not apply to shared work
15 employers under chapter 50.60 RCW;

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

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

30 (b) The employer requesting relief of charges under this
31 subsection must request relief in writing within 30 days following
32 mailing to the last known address of the notification of the valid
33 initial determination of such claim, stating the date and reason for
34 the separation or the circumstances of continued employment. The
35 commissioner, upon investigation of the request, shall determine
36 whether relief should be granted.

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

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

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

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

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

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

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

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

34 NEW SECTION. **Sec. 3.** A new section is added to chapter 50.20
35 RCW to read as follows:

36 If an individual receives benefits under this title while being
37 unemployed due to a strike at the separating employer's factory,
38 establishment, or other premises and the individual subsequently
39 receives retroactive wages from the separating employer for any week

1 for which he or she received benefits under this title, the
2 department shall issue an overpayment assessment to recover the
3 corresponding benefits as provided under RCW 50.20.190.

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

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14 On page 1, line 2 of the title, after "workers;" strike the
15 remainder of the title and insert "amending RCW 50.20.090; reenacting
16 and amending RCW 50.29.021; adding a new section to chapter 50.20
17 RCW; and creating a new section."

EFFECT: For the disqualification for UI benefits that may end on
the second Sunday following the first date of the strike, the
disqualification is that the strike is not found to be prohibited by
federal or state law in a final judgment, in which case the
disqualification would resume as of the date of the judgment, rather
than that the strike is not prohibited by federal or state law.

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