

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1106

68th Legislature
2023 Regular Session

Passed by the House April 13, 2023
Yeas 56 Nays 41

**Speaker of the House of
Representatives**

Passed by the Senate April 6, 2023
Yeas 26 Nays 20

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1106** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1106

AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature 2023 Regular Session

By House Labor & Workplace Standards (originally sponsored by Representatives Fosse, Reeves, Reed, Berry, Doglio, Wylie, Kloba, Santos, and Ormsby)

READ FIRST TIME 01/24/23.

1 AN ACT Relating to qualifications for unemployment insurance when
2 an individual voluntarily leaves work; amending RCW 50.20.050 and
3 50.29.021; adding a new section to chapter 50.04 RCW; and creating
4 new sections.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 50.04
7 RCW to read as follows:

8 "Vulnerable adult" has the same meaning as in RCW 74.34.020.

9 **Sec. 2.** RCW 50.20.050 and 2022 c 268 s 42 are each amended to
10 read as follows:

11 (1) With respect to separations that occur on or after September
12 6, 2009, and for separations that occur before April 4, 2021:

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

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

5 (i) The duration of the work;

6 (ii) The extent of direction and control by the employer over the
7 work; and

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

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

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

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

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

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

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

33 (iv) The separation was necessary to protect the claimant or the
34 claimant's immediate family members from domestic violence, as
35 defined in RCW 7.105.010, or stalking, as defined in RCW 9A.46.110;

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

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

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

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

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

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

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

19 (2) With respect to separations that occur on or after April 4,
20 2021:

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

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

33 (i) The duration of the work;

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

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

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

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

3 (ii) The separation was necessary because ~~((of the))~~: Of the
4 illness or disability of the claimant ((of)); of the death, illness,
5 or disability of a member of the claimant's immediate family ((if))
6 for separations that occur before September 3, 2023; of the death,
7 illness, or disability of a family member for separations that occur
8 on or after September 3, 2023; or the care for a child or a
9 vulnerable adult in the claimant's care is inaccessible for
10 separations that occur on or after July 7, 2024, and before July 8,
11 2029. However, to qualify based on a circumstance in this subsection
12 (2)(b)(ii), the following requirements must be met:

13 (A) The claimant made reasonable efforts to preserve the
14 claimant's employment status by requesting ~~((a leave of absence, by~~
15 ~~having promptly notified))~~ changes in working conditions or work
16 schedule that would accommodate the death, illness, disability, or
17 caregiving inaccessibility, or by requesting a leave of absence,
18 promptly notifying the employer of the reason for the absence, and
19 ~~((by having promptly requested))~~ promptly requesting reemployment
20 when again able to assume employment. These alternatives need not be
21 pursued, however, when they would have been a futile act, including
22 those instances when the futility of the act was a result of a
23 recognized labor/management dispatch system; and

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

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

31 (iv) The separation was necessary to protect the claimant or the
32 claimant's immediate family members from domestic violence, as
33 defined in RCW 7.105.010, or stalking, as defined in RCW 9A.46.110;

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

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

38 (vii) The claimant's worksite changed, such change caused a
39 material increase in distance or difficulty of travel, and, after the

1 change, the commute was greater than is customary for workers in the
2 individual's job classification and labor market;

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

6 (ix) The claimant left work because of illegal activities in the
7 claimant's worksite, the claimant reported such activities to the
8 employer, and the employer failed to end such activities within a
9 reasonable period of time;

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

12 (xi) The claimant left work to enter an apprenticeship program
13 approved by the Washington state apprenticeship training council.
14 Benefits are payable beginning Sunday of the week prior to the week
15 in which the claimant begins active participation in the
16 apprenticeship program; ((~~or~~))

17 (xii) During a public health emergency:

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

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

23 (C) The claimant or another individual residing with the claimant
24 is at higher risk of severe illness or death from the disease that is
25 the subject of the public health emergency because the higher risk
26 individual:

27 (I) Was in an age category that is defined as high risk for the
28 disease that is the subject of the public health emergency by the
29 federal centers for disease control and prevention, the department of
30 health, or the equivalent agency in the state where the individual
31 resides; or

32 (II) Has an underlying health condition, verified as required by
33 the department by rule, that is identified as a risk factor for the
34 disease that is the subject of the public health emergency by the
35 federal centers for disease control and prevention, the department of
36 health, or the equivalent agency in the state where the individual
37 resides;

38 (xiii) For separations that occur on or after July 7, 2024, the
39 claimant: (A) Left work to relocate in order to follow a minor child
40 who moved outside of the claimant's labor market; (B) remained

1 employed as long as was reasonable prior to relocating; and (C) had
2 parental rights over the minor child at the time of the job
3 separation; or

4 (xiv) For separations that occur on or after July 7, 2024, the
5 claimant had a regularly scheduled shift or split shift start or end
6 time for the prior 90 calendar days, and the employer, without
7 request by the claimant and not based on a system of seniority,
8 changed the regularly scheduled shift or split shift start or end
9 time by six or more hours for that shift on a nontemporary basis.

10 (3) With respect to claims that occur on or after July 4, 2021, a
11 claimant has good cause and is not disqualified from benefits under
12 subsection (2)(a) of this section under the following circumstances,
13 in addition to those listed under subsection (2)(b) of this section,
14 if, during a public health emergency, the claimant worked at a health
15 care facility as defined in RCW 9A.50.010, was directly involved in
16 the delivery of health services, and left work for the period of
17 quarantine consistent with the recommended guidance from the United
18 States centers for disease control and prevention or subject to the
19 direction of the state or local health jurisdiction because of
20 exposure to or contracting the disease that is the subject of the
21 declaration of the public health emergency.

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

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

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

31 **Sec. 3.** RCW 50.29.021 and 2021 c 251 s 4 are each amended to
32 read as follows:

33 (1)(a) An experience rating account shall be established and
34 maintained for each employer, except employers as described in RCW
35 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
36 payments in lieu of contributions, taxable local government employers
37 as described in RCW 50.44.035, and those employers who are required
38 to make payments in lieu of contributions, based on existing records
39 of the employment security department.

1 (b) Benefits paid to an eligible individual shall be charged to
2 the experience rating accounts of each of such individual's employers
3 during the individual's base year in the same ratio that the wages
4 paid by each employer to the individual during the base year bear to
5 the wages paid by all employers to that individual during that base
6 year, except as otherwise provided in this section.

7 (c) When the eligible individual's separating employer is a
8 covered contribution paying base year employer, benefits paid to the
9 eligible individual shall be charged to the experience rating account
10 of only the individual's separating employer if the individual
11 qualifies for benefits under:

12 (i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and
13 became unemployed after having worked and earned wages in the bona
14 fide work;

15 (ii) RCW 50.20.050 (1)(b)(v) through (x) or (2)(b)(v) through
16 (x); or

17 (iii) During a public health emergency, the claimant worked at a
18 health care facility as defined in RCW 9A.50.010, was directly
19 involved in the delivery of health services, and was terminated from
20 work due to entering quarantine because of exposure to or contracting
21 the disease that is the subject of the declaration of the public
22 health emergency.

23 (2) The legislature finds that certain benefit payments, in whole
24 or in part, should not be charged to the experience rating accounts
25 of employers except those employers described in RCW 50.44.010,
26 50.44.030, and 50.50.030 who have properly elected to make payments
27 in lieu of contributions, taxable local government employers
28 described in RCW 50.44.035, and those employers who are required to
29 make payments in lieu of contributions, as follows:

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

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

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

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

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

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

10 (e) Benefits paid to an individual who qualifies for benefits
11 under RCW 50.20.050(1)(b) (iv) or (xi), (2)(b)(ii), only for
12 separation that was necessary because the care for a child or a
13 vulnerable adult in the claimant's care is inaccessible, (iv), (xi),
14 ~~((~~o~~))~~ (xii), or (xiii), or (3), as applicable, shall not be charged
15 to the experience rating account of any contribution paying employer.

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

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

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

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

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

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

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

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

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

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

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

29 (v) Continues to be employed on a regularly scheduled permanent
30 part-time basis by a base year employer and who qualified for two
31 consecutive unemployment claims where wages were attributable to at
32 least one employer who employed the individual in both base years.
33 Benefit charge relief ceases when the employment relationship between
34 the employer requesting relief and the claimant is terminated. This
35 subsection does not apply to shared work employers under chapter
36 50.60 RCW;

37 (vi) Was hired to replace an employee who is a member of the
38 military reserves or National Guard and was called to federal active
39 military service by the president of the United States and is
40 subsequently laid off when that employee is reemployed by their

1 employer upon release from active duty within the time provided for
2 reemployment in RCW 73.16.035;

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

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

11 (b) The employer requesting relief of charges under this
12 subsection must request relief in writing within (~~thirty~~) 30 days
13 following mailing to the last known address of the notification of
14 the valid initial determination of such claim, stating the date and
15 reason for the separation or the circumstances of continued
16 employment. The commissioner, upon investigation of the request,
17 shall determine whether relief should be granted.

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

29 (5) An employer's experience rating account may not be relieved
30 of charges for a benefit payment and an employer who reimburses the
31 trust fund for benefit payments may not be credited for a benefit
32 payment if a benefit payment was made because the employer or
33 employer's agent failed to respond timely or adequately to a written
34 request of the department for information relating to the claim or
35 claims without establishing good cause for the failure and the
36 employer or employer's agent has a pattern of such failures. The
37 commissioner has the authority to determine whether the employer has
38 good cause under this subsection.

39 (a) For the purposes of this subsection, "adequately" means
40 providing accurate information of sufficient quantity and quality

1 that would allow a reasonable person to determine eligibility for
2 benefits.

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

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

10 (B) Twenty percent of the total current claims against the
11 employer.

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

15 NEW SECTION. **Sec. 4.** By November 1, 2028, and in compliance
16 with RCW 43.01.036, the employment security department must submit a
17 report to the legislature that details the number of unemployment
18 insurance benefit claims, the impact on the trust fund and employer
19 experience ratings, and any trends for utilization by industries for
20 claims allowed for separations on or after July 7, 2024, and before
21 July 2, 2028, which were necessary because care for a child or a
22 vulnerable adult in the claimant's care was inaccessible as provided
23 in RCW 50.02.050.

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

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