

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1570

68th Legislature
2023 Regular Session

Passed by the House March 2, 2023
Yeas 87 Nays 9

**Speaker of the House of
Representatives**

Passed by the Senate April 11, 2023
Yeas 49 Nays 0

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 **SUBSTITUTE HOUSE BILL 1570** 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**

SUBSTITUTE HOUSE BILL 1570

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature 2023 Regular Session

By House Labor & Workplace Standards (originally sponsored by Representatives Berry, Ryu, Alvarado, Bateman, Fitzgibbon, Ramel, Doglio, Lekanoff, Reed, Pollet, Macri, and Fosse)

READ FIRST TIME 02/14/23.

1 AN ACT Relating to social insurance programs managed by the
2 employment security department applicable to transportation network
3 companies, transportation network company drivers, and part-time
4 work; amending RCW 50.29.021 and 50A.25.040; adding a new section to
5 chapter 50.04 RCW; adding a new section to chapter 46.72B RCW; and
6 providing an expiration date.

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

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

10 (1) Notwithstanding RCW 50.04.140, services performed by a driver
11 that are facilitated through a digital network are subject to this
12 title. Except as otherwise provided in rules adopted by the
13 department, the laws and rules that apply under this title to a
14 relationship meeting the requirements of RCW 50.04.100 also apply to
15 the relationship between a driver and a transportation network
16 company.

17 (2) This section must not be interpreted as:

18 (a) Amending the definitions and exceptions in RCW 50.04.100 or
19 50.04.140; or

20 (b) Limiting the scope of coverage under this title as to any
21 other employment relationship.

1 (3) For purposes of this section, the definitions in this
2 subsection apply unless the context clearly requires otherwise.

3 (a) "Digital network" has the meaning provided in RCW 49.46.300.

4 (b) "Driver" has the meaning provided in RCW 49.46.300.

5 (c) "Transportation network company" has the meaning provided in
6 RCW 49.46.300.

7 **Sec. 2.** RCW 50.29.021 and 2021 c 251 s 4 are each amended to
8 read as follows:

9 (1)(a) An experience rating account shall be established and
10 maintained for each employer, except employers as described in RCW
11 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
12 payments in lieu of contributions, taxable local government employers
13 as described in RCW 50.44.035, and those employers who are required
14 to make payments in lieu of contributions, based on existing records
15 of the employment security department.

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

22 (c) When the eligible individual's separating employer is a
23 covered contribution paying base year employer, benefits paid to the
24 eligible individual shall be charged to the experience rating account
25 of only the individual's separating employer if ~~((the))~~:

26 (i) The individual qualifies for benefits under ~~((~~
27 ~~+~~)) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and
28 became unemployed after having worked and earned wages in the bona
29 fide work;

30 (ii) The individual qualifies for benefits under RCW 50.20.050
31 (1)(b)(v) through (x) or (2)(b)(v) through (x); or

32 (iii) During a public health emergency, the claimant worked at a
33 health care facility as defined in RCW 9A.50.010, was directly
34 involved in the delivery of health services, and was terminated from
35 work due to entering quarantine because of exposure to or contracting
36 the disease that is the subject of the declaration of the public
37 health emergency.

38 (2) The legislature finds that certain benefit payments, in whole
39 or in part, should not be charged to the experience rating accounts

1 of employers except those employers described in RCW 50.44.010,
2 50.44.030, and 50.50.030 who have properly elected to make payments
3 in lieu of contributions, taxable local government employers
4 described in RCW 50.44.035, and those employers who are required to
5 make payments in lieu of contributions, as follows:

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

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

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

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

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

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

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

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

37 (g) Upon approval of an individual's training benefits plan
38 submitted in accordance with RCW 50.22.155(2), an individual is
39 considered enrolled in training, and regular benefits beginning with

1 the week of approval shall not be charged to the experience rating
2 account of any contribution paying employer.

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

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

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

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

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

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

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

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

36 (iv) Continues to be employed (~~on a regularly scheduled~~
37 ~~permanent part-time basis by a base year employer and who at some~~
38 ~~time during the base year was concurrently employed and subsequently~~
39 ~~separated from at least one other base year employer. Benefit charge~~
40 ~~relief ceases when the employment relationship between the employer~~

1 ~~requesting relief and the claimant is terminated)~~ by the employer
2 seeking relief and: (A) The employer furnished part-time work to the
3 individual during the base year; (B) the individual has become
4 eligible for benefits because of loss of employment with one or more
5 other employers; and (C) the employer has continued to furnish or
6 make available part-time work to the individual in substantially the
7 same amount as during the individual's base year. This subsection
8 does not apply to shared work employers under chapter 50.60 RCW;

9 ~~(v) ((Continues to be employed on a regularly scheduled permanent~~
10 ~~part-time basis by a base year employer and who qualified for two~~
11 ~~consecutive unemployment claims where wages were attributable to at~~
12 ~~least one employer who employed the individual in both base years.~~
13 ~~Benefit charge relief ceases when the employment relationship between~~
14 ~~the employer requesting relief and the claimant is terminated. This~~
15 ~~subsection does not apply to shared work employers under chapter~~
16 ~~50.60 RCW;~~

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

23 ~~((vii))~~ (vi) Worked for an employer for 20 weeks or less, and
24 was laid off at the end of temporary employment when that employee
25 temporarily replaced a permanent employee receiving family or medical
26 leave benefits under Title 50A RCW, and the layoff is due to the
27 return of that permanent employee. This subsection (3)(a) ~~((vii))~~
28 (vi) applies to claims with an effective date on or after January 1,
29 2020; or

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

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

39 (4) When a benefit claim becomes invalid due to an amendment or
40 adjustment of a report where the employer failed to report or

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

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

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

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

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

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

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

36 NEW SECTION. **Sec. 3.** A new section is added to chapter 46.72B
37 RCW to read as follows:

1 (1) Beginning July 1, 2024, the employment security department
2 shall develop and administer a pilot program under Title 50A RCW
3 focusing on transportation network companies and drivers.

4 (2) The pilot program must require that:

5 (a) Drivers may continue to have the option of electing coverage
6 under Title 50A RCW as self-employed individuals;

7 (b) By the 15th day of the month following the end of the
8 calendar quarter, transportation network companies report to each
9 driver in Washington the total amount of compensation, as defined in
10 RCW 49.46.300, that the driver earned providing network services
11 through the transportation network company's digital network in that
12 quarter;

13 (c) By the 15th day of the month following the drivers' reporting
14 deadline for the calendar quarter, the employment security department
15 share data with each transportation network company on the drivers
16 who, in that calendar quarter: (i) Reported and paid assessed
17 premiums; and (ii) withdrew or canceled paid family and medical leave
18 coverage; and

19 (d) By the 15th day following the receipt of information from the
20 employment security department under (c) of this subsection,
21 transportation network companies pay each driver who elected coverage
22 under (a) of this subsection an amount equal to the premium rate
23 assessed, multiplied by the amount of compensation, as defined in RCW
24 49.46.300, that the driver earned providing network services through
25 the transportation network company's digital network in that quarter.
26 For purposes of this section, compensation shall not include any
27 amount listed in RCW 50A.05.010(22)(d). The requirement to pay
28 premiums under the pilot program ends December 31, 2028.

29 (3) For the purposes of the pilot program, this section does not
30 require a driver to opt into family and medical leave coverage for
31 any other self-employment or independent contract work not associated
32 with a transportation network company.

33 (4) Drivers in the pilot program are not subject to the
34 requirements in RCW 50A.10.010(1).

35 (5) Drivers electing coverage must elect both family and medical
36 leave and are responsible for 100 percent of all premiums assessed to
37 an employee under RCW 50A.10.030.

38 (6) The driver must file a notice of election in writing with the
39 employment security department, in a manner as required by the
40 department in rule.

1 (7) The driver is eligible for family and medical leave after
2 working 820 hours in the state during the qualifying period following
3 the date of filing the notice.

4 (8) (a) The employment security department must evaluate the pilot
5 program for its impacts on removing barriers to accessing paid family
6 and medical leave, as well as impacts on the paid family and medical
7 leave insurance account.

8 (b) By September 1, 2027, the employment security department must
9 submit a report to the appropriate committees of the legislature
10 summarizing the employment security department's evaluation of the
11 pilot program and making any recommendations, if appropriate.

12 (9) The employment security department may adopt rules necessary
13 to implement the pilot program in this section.

14 (10) This section expires December 31, 2028.

15 **Sec. 4.** RCW 50A.25.040 and 2019 c 13 s 73 are each amended to
16 read as follows:

17 (1) An individual shall have access to all records and
18 information concerning that individual held by the department unless
19 the information is exempt from disclosure under RCW 42.56.410.

20 (2) An employer shall have access to:

21 (a) Its own records relating to any claim or determination for
22 family or medical leave benefits by an individual;

23 (b) Records and information relating to a decision to allow or
24 deny benefits if the decision is based on material information
25 provided by the employer; and

26 (c) Records and information related to that employer's premium
27 assessment.

28 (3) The department may disclose records and information deemed
29 confidential under this chapter to a third party acting on behalf of
30 an individual or employer that would otherwise be eligible to receive
31 records under subsection (1) or (2) of this section when the
32 department receives a signed release from the individual or employer.
33 The release must include a statement:

34 (a) Specifically identifying the information that is to be
35 disclosed;

36 (b) That state government files will be accessed to obtain that
37 information;

1 (c) Of the specific purpose or purposes for which the information
2 is sought and a statement that information obtained under the release
3 will only be used for that purpose or purposes; and

4 (d) Indicating all the parties who may receive the information
5 disclosed.

6 (4) Until February 15, 2029, to verify coverage and make payments
7 to drivers for premiums paid, the department may disclose the
8 following information to a transportation network company, as defined
9 in RCW 49.46.300, about a driver, as defined in RCW 49.46.300:

10 (a) When a driver has elected coverage;

11 (b) A driver's assessed and paid premiums;

12 (c) When a driver's elective coverage has been withdrawn or
13 canceled; and

14 (d) Information related to a third party acting on a driver's
15 behalf with regard to reporting and paying of premiums.

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