
SENATE BILL 5109

State of Washington

68th Legislature

2023 Regular Session

By Senators Saldaña, Valdez, Dhingra, Frame, Hasegawa, Keiser, Kuderer, Lias, Lovelett, Nguyen, Nobles, Stanford, and C. Wilson

Prefiled 12/29/22. Read first time 01/09/23. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to creating a wage replacement program for
2 certain Washington workers excluded from unemployment insurance;
3 reenacting and amending RCW 42.56.410; adding new chapters to Title
4 50C RCW; adding a new title to the Revised Code of Washington to be
5 codified as Title 50C RCW; and prescribing penalties.

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

7 **GENERAL PROVISIONS**

8 NEW SECTION. **Sec. 1.** The legislature finds and declares:

9 (1) When unemployment insurance was established by the United
10 States congress and the state legislature, the legislature explicitly
11 recognized that economic insecurity caused by unemployment is the
12 greatest hazard of our economic life that falls with crushing force
13 upon the unemployed worker, which therefore requires the compulsory
14 setting aside of unemployment reserves to reduce the suffering caused
15 by unemployment to a minimum. Unemployment insurance is essential to
16 ensure that individuals who lose income can survive and meet their
17 basic needs during periods they are unable to find stable work.

18 (2) Many immigrant workers, however, are not eligible for
19 unemployment insurance and have not received any assistance from this
20 jointly administered state and federal insurance program. RCW

1 50.20.098 provides that unemployment insurance benefits shall not be
2 payable unless the individual was lawfully admitted for permanent
3 residence, was lawfully present for purposes of performing such
4 services, or otherwise was permanently residing in the United States
5 under color of law at the time such services were performed. Title 8
6 U.S.C. Sec. 1621(d) requires that states wishing to extend benefits
7 beyond a short list of qualified immigrants must affirmatively do so.
8 Those ineligible to receive unemployment benefits include workers
9 without work authorization, workers whose work authorization has
10 expired or is awaiting renewal, and workers who recently regularized
11 their immigration status.

12 (3) Ineligibility for unemployment benefits has devastated
13 immigrant communities during the pandemic economic crisis,
14 particularly immigrants working in low-wage industries. Several of
15 the industries that have experienced the highest rates of job loss in
16 Washington due to the pandemic are low-wage sectors with the highest
17 numbers of immigrant workers including the restaurant, hotel, retail,
18 and construction industries. Economists predict large-scale permanent
19 job loss and long-term unemployment as the effects of the pandemic
20 are similar to the great recession of 2008. Without access to
21 unemployment benefits among other critical safety net programs,
22 Washington's immigrant communities face deep economic devastation for
23 years to come. Prior to the pandemic, the poverty rate of immigrants
24 in Washington was already high, with 18 percent of the state's
25 immigrant residents living in poverty compared to 12 percent of
26 United States born residents. The crisis is expected to significantly
27 expand this disparity.

28 (4) To support the survival of Washington's immigrant workers and
29 families during periods of crisis, particularly low-income
30 households, and to provide the safety net that United States born
31 Washington residents can access, the legislature intends to establish
32 a weekly wage replacement state program similar to the state and
33 federal unemployment insurance program for workers who are unemployed
34 and not eligible for the state and federal unemployment insurance.

35 NEW SECTION. **Sec. 2.** In addition to the definitions provided in
36 this section, the definitions provided in chapter 50.04 RCW apply
37 throughout this title unless the context clearly requires otherwise.

38 (1) "Application for initial determination" has the meaning
39 provided in RCW 50.20.140.

1 (2) "Benefit" or "benefits" means the compensation payable to a
2 claimant, as provided in either Title 50 RCW or this title with
3 respect to the claimant's unemployment.

4 (3) "Claimant" means an individual applying for benefits under
5 this title.

6 (4) "Employment" has the meaning provided in RCW 50.04.100,
7 subject to the provisions of RCW 50.04.110, 50.04.120 through
8 50.04.205, and 50.04.210 through 50.04.280. The provisions of RCW
9 50.04.206 do not apply to the definition of "employment" for this
10 title.

11 (5) (a) "Resident of the state of Washington" means a claimant who
12 takes actions indicating they intend to live in Washington state on
13 more than a temporary or transient basis throughout the duration of
14 receiving benefits under this title. Unless the department has
15 information indicating otherwise, the department must presume that a
16 claimant is a resident of the state of Washington if the claimant:

17 (i) Maintains a residence in Washington for personal use with a
18 utility bill showing their full name and Washington state address;

19 (ii) Lives in a motor home or vessel that is not permanently
20 attached to any real property if the claimant previously lived in
21 this state and does not have a permanent residence in any other
22 state;

23 (iii) Is attending school in this state and paying tuition as a
24 Washington resident, is a custodial parent with a child attending a
25 public school in this state, or has correspondence from a school in
26 this state showing their full name and Washington state address;

27 (iv) Has a Washington state identification card showing their
28 full name and Washington state address;

29 (v) Has a current library card issued in this state;

30 (vi) Has correspondence from a community or faith-based
31 organization in this state showing their full name and Washington
32 state address; or

33 (vii) Has a medical document showing their full name and
34 Washington state address.

35 (b) The actions and documentation outlined in this subsection (5)
36 are a nonexhaustive list and the department may adopt additional
37 methods by which a claimant may prove they are a resident of the
38 state of Washington.

39 (6) "Wage" or "wages" has the meaning provided in RCW 50.04.320,
40 subject to the provisions of RCW 50.04.330 through 50.04.355.

1 (7) "Week of unemployment" means any week during which a
2 claimant, including a self-employed claimant:

3 (a) Performs no services and with respect to which no
4 remuneration is payable to the claimant; or

5 (b) Performs less than full-time work if the remuneration payable
6 to the claimant with respect to such week is less than one and one-
7 third times the individual's weekly benefit amount plus \$5.00.

8 NEW SECTION. **Sec. 3.** The Washington wage replacement account is
9 created in the custody of the state treasurer. Revenues to the
10 account must consist of appropriations and transfers by the
11 legislature and all other funding directed for deposit into the
12 account. Expenditures from the account may be used only for providing
13 benefits under this title to eligible and qualified claimants,
14 contracting with community-based organizations to notify individuals
15 who may be eligible for benefits under this title, and administrative
16 expenses of the department under this act. Only the commissioner of
17 the department or the commissioner's designee may authorize
18 expenditures from the account. The account is subject to the
19 allotment procedures under chapter 43.88 RCW, but an appropriation is
20 not required for expenditures.

21 NEW SECTION. **Sec. 4.** (1) The department must appoint an
22 advisory committee to review issues and topics of interest related to
23 this title.

24 (2) The committee is composed of 11 members:

25 (a) Three members representing immigrants' interests;

26 (b) Two members representing workers' interests in unemployment,
27 each of whom must be appointed from a list of names submitted by a
28 recognized statewide organization of employees;

29 (c) Two members representing employers' interests in
30 unemployment, each of whom must be appointed from a list of names
31 submitted by a recognized statewide organization of employers;

32 (d) Three ex officio members, without a vote, representing the
33 state commission on African American affairs, the state commission on
34 Hispanic affairs, and the state commission on Asian Pacific American
35 affairs; and

36 (e) One ex officio member, without a vote, representing the
37 department and who will serve as the chair.

1 (3) The advisory committee must provide comment on department
2 rule making, policies, implementation of this title, utilization of
3 benefits under this title, and other initiatives, and study issues
4 the advisory committee determines to require its consideration.

5 (4) The members must serve without compensation but are eligible
6 for reimbursement of travel expenses as provided in RCW 43.03.050 and
7 43.03.060, and for stipends provided by the department under RCW
8 43.03.220. The advisory committee may utilize such personnel and
9 facilities of the department as it needs, without charge. All
10 expenses of the advisory committee must be paid by the Washington
11 wage replacement account created in section 3 of this act.

12 **APPLICATION AND BENEFITS**

13 NEW SECTION. **Sec. 5.** Beginning January 1, 2026, a claimant is
14 eligible to receive benefits under this title with respect to any
15 week of unemployment in their benefit year if the department
16 determines the following steps are satisfied in sequential order:

17 (1) The claimant files an application for initial determination
18 of benefits under Title 50 RCW;

19 (2) The department denies the claimant's application for initial
20 determination of benefits based on the claimant not being authorized
21 to work in the United States at the time the work was performed or
22 during the week for which the claimant is applying for unemployment
23 benefits under Title 50 RCW;

24 (3) After a denial under subsection (2) of this section, the
25 department invites the claimant to apply for benefits under this
26 title; and

27 (4) The claimant meets the eligibility requirements under
28 sections 6 and 7 of this act.

29 NEW SECTION. **Sec. 6.** To be eligible for benefits under this
30 title, a claimant invited by the department to apply for benefits
31 under section 5 of this act must then satisfy the steps in this
32 section in sequential order.

33 (1) The claimant must file an initial application for benefits
34 under this title with the department, which includes information or
35 documentation verifying the claimant:

36 (a) Is a resident of the state of Washington and has sufficient
37 photographic identification confirming their identity;

1 (b) Worked 680 hours in employment in their base year or earned
2 wages during their base year equal to 680 times the minimum wage set
3 by RCW 49.46.020 in effect during the first quarter of the claimant's
4 base year;

5 (c) Is unemployed through no fault of their own; and

6 (d) Has been unemployed for a waiting period of one week.

7 (2) If the claimant's wages are not verified by employer reports
8 to the department under subsection (1)(b) of this section, the
9 department must request additional information or documentation from
10 the claimant verifying the claimant earned wages during their base
11 year equal to 680 times the minimum wage set by RCW 49.46.020 in
12 effect during the first quarter of the claimant's base year. If,
13 after the department's request, the claimant fails to provide
14 sufficient information or documentation, the claimant may be denied
15 benefits under this title.

16 (3) The department may request information or documentation from
17 the claimant's former employers to verify the circumstances under
18 which the claimant separated from employment when determining the
19 eligibility standard under subsection (1)(c) of this section. If an
20 employer fails to respond to a request under this subsection (3), the
21 department must consider the eligibility standard under subsection
22 (1)(c) of this section satisfied.

23 (4) The department may contract with a third-party, community-
24 based organization to assist claimants in gathering information or
25 documentation required under this section.

26 (5) The department must make the final decision on whether the
27 claimant is eligible for benefits under this title. The department
28 may utilize information or documentation provided by the claimant or
29 any third-party, community-based organization contracted under this
30 section.

31 NEW SECTION. **Sec. 7.** (1) If the department determines the
32 claimant is eligible for benefits under this title, the claimant may
33 qualify for weekly benefits by self-attesting, in a form and manner
34 adopted in rule by the department, that the claimant meets the
35 following requirements for each week of unemployment in which the
36 claimant is applying for benefits under this title:

37 (a) The claimant must be actively seeking work in any trade,
38 occupation, profession, or business for which the claimant is
39 reasonably fitted; and

1 (b) The claimant must report to the department any wages or
2 remuneration the claimant received.

3 (2) For the purposes of this section, "actively seeking work"
4 means participating in job search, educational, or professional
5 development activities adopted in rule by the department. In
6 developing these activities, the department must consider the unique
7 circumstances of a claimant under this title.

8 (3) The department may conduct random audits to confirm the
9 claimant's job search, educational, or professional development
10 activities, and current unemployment status.

11 NEW SECTION. **Sec. 8.** A claimant who is eligible for benefits
12 under this title must receive a weekly benefit amount equal to the
13 weekly benefit amount calculated in RCW 50.20.120.

14 NEW SECTION. **Sec. 9.** A determination of the amount of benefits
15 potentially payable under this title must not serve as a basis for
16 appeal but must be subject to request by the claimant for
17 reconsideration or redetermination by the department at any time
18 within one year of the date of delivery or mailing of such
19 determination, or any such redetermination.

20 NEW SECTION. **Sec. 10.** (1) If waiting period credit or the
21 payment of benefits under this title are denied to any claimant for
22 any week or weeks, the claimant must be promptly issued written
23 notice of the denial and reasons for such denial.

24 (2) If the department believes the claimant's right to waiting
25 period credit or benefits under this title is at issue because of the
26 claimant's separation from work for any reason other than lack of
27 work, the department must promptly issue a determination of allowance
28 or denial of waiting period credit or benefits under this title and
29 the reasons for such allowance or denial to the claimant.

30 (3) Notice that the waiting period credit or benefits under this
31 title allowed or denied must suffice for the particular weeks stated
32 in the notice or until the condition upon which the allowance or
33 denial was based has been changed.

34 NEW SECTION. **Sec. 11.** (1) A claimant is disqualified for
35 benefits under this title:

36 (a) If the department finds that a claimant:

1 (i) Left their most recent work voluntarily without good cause;
2 (ii) Was discharged for misconduct or gross misconduct connected
3 with their most recent work; or
4 (iii) Knowingly made a false statement or representation
5 involving a material fact or knowingly failed to report a material
6 fact and, as a result, has obtained or attempted to obtain any
7 benefits under this title; or

8 (b) For any week a claimant has received, is receiving, or will
9 receive compensation, as determined by the governing state or federal
10 agency under:

11 (i) Title 50 RCW;
12 (ii) Title 50A RCW;
13 (iii) RCW 51.32.060;
14 (iv) RCW 51.32.090; or
15 (v) Any other applicable federal unemployment compensation,
16 industrial insurance, or state disability insurance laws.

17 (2) In making the determination under subsection (1) of this
18 section, the department must use the provisions of RCW 50.20.050,
19 50.20.066, 50.20.070, and 50.20.085 as a guide while accounting for
20 the unique circumstances of a claimant under this title.

21 (3) Cessation of operations by an employer for the purpose of
22 granting vacations, whether by union contract or other reasons, must
23 not be construed to be a voluntary quit or a voluntary unemployment
24 on the part of the claimant.

25 (4) Durations of disqualifications in subsection (1) of this
26 section must conform to comparable durations provided in RCW
27 50.20.050, 50.20.066, 50.20.070, and 50.20.085.

28 NEW SECTION. **Sec. 12.** (1) Benefits are due and payable under
29 this title only to the extent provided in this title and to the
30 extent that moneys are available in the Washington wage replacement
31 account created in section 3 of this act.

32 (2) Neither the department nor the state are liable for any
33 amount exceeding such sums.

34 **PRIVACY AND CONFIDENTIALITY**

35 NEW SECTION. **Sec. 13.** (1) If information provided to the
36 department by another governmental agency is held private and

1 confidential by state or federal laws, the department may not release
2 such information.

3 (2) Information provided to the department by another
4 governmental entity conditioned upon the privacy and confidentiality
5 is to be held private and confidential according to the agreement
6 between the department and other governmental entity.

7 (3) The department may hold private and confidential information
8 obtained for statistical analysis, research, or study purposes if the
9 information was supplied voluntarily, conditioned upon maintaining
10 confidentiality of the information.

11 (4) Persons requesting disclosure of information held by the
12 department under subsection (1) or (2) of this section must request
13 such disclosure from the agency providing the information to the
14 department rather than from the department.

15 NEW SECTION. **Sec. 14.** Any information or records concerning a
16 claimant or employing unit obtained by the department pursuant to the
17 administration of this title must be private and confidential, except
18 as otherwise provided in this chapter. This chapter does not create a
19 rule of evidence. Information or records may only be released by the
20 department when the release is:

21 (1) To the person who is the subject of such records or an
22 authorized representative;

23 (2) Necessary to comply with a lawful court order, judicial
24 warrant signed by a judge appointed pursuant to Article III of the
25 United States Constitution, or judicial subpoena for specific records
26 issued pursuant to the criminal procedure law or the civil practice
27 law and rules; or

28 (3) Disclosed in a manner that could not be used to determine the
29 identities of the claimants or employers to whom the data pertains,
30 alone or in combination with other data.

31 NEW SECTION. **Sec. 15.** (1) In administering the program under
32 this title, the department is prohibited from taking any of the
33 following actions:

34 (a) Soliciting from the claimant, orally or in written form, a
35 claimant's nationality, race, ethnicity, place of birth, eligibility
36 or ineligibility for a social security number, citizenship, or
37 immigration status;

1 (b) Indicating in its records which documents the claimant used
2 to prove their age or identity;

3 (c) Compelling a claimant to admit in writing whether they have
4 proof of lawful presence in the United States or to explain why they
5 are ineligible for a social security number;

6 (d) Contacting a claimant's current, former, or prospective
7 employers including, but not limited to, for the purposes of
8 verifying employment status, except as authorized in section 6(3) of
9 this act; and

10 (e) Attempting to ascertain a claimant's immigration or
11 citizenship status, except to determine whether a claimant is
12 excluded from benefits under Title 50 RCW and potentially eligible
13 for benefits under this title.

14 (2) The department must destroy all records containing
15 information that were provided by a claimant or collected by the
16 department to verify eligibility for the program within 15 days of a
17 claimant's written statement that they are no longer using the
18 program.

19 (3) As provided in RCW 42.56.410, any information under this
20 title is not a public record and must not be disclosed or otherwise
21 made accessible in response to any request for records except:

22 (a) To the person who is the subject of such records or an
23 authorized representative;

24 (b) Where necessary to comply with a lawful court order, judicial
25 warrant signed by a judge appointed pursuant to Article III of the
26 United States Constitution, or judicial subpoena for individual
27 records issued pursuant to the criminal procedure law or the civil
28 practice law and rules; or

29 (c) If disclosed in a manner that could not be used to determine
30 the identities of the claimants or employers to whom the data
31 pertains, alone or in combination with other data.

32 (4) For the purposes of this section, whenever a lawful court
33 order, judicial warrant, or judicial subpoena for individual records
34 properly issued pursuant to the criminal procedure law or the civil
35 practice law and rules is presented to a court, only those records,
36 documents, and information specifically sought by such court order,
37 warrant, or subpoena may be disclosed.

38 (5) Notwithstanding any other law, information and records
39 containing information that are collected or obtained by the state,
40 any state agency, or any subdivision of the state, including agents

1 of the state universities and community colleges, in addition to any
2 private persons contracted to administer public services or programs,
3 must only be collected, used, and retained for the purpose of
4 assessing eligibility for and providing those public services and
5 programs created by this title.

6 (6) No information collected under this title may be used for
7 purposes of investigating, locating, or apprehending claimants for
8 immigration-related violations including, but not exclusive to,
9 queries or inquiries under 8 U.S.C. Secs. 1324, 1325, and 1326.

10 (7) In carrying out the program created under this title, the
11 department must establish prohibitions and safeguards against
12 unauthorized access to, and use of, any information collected under
13 this title by private or public entities. For the purposes of this
14 subsection, "unauthorized access" includes, but is not limited to,
15 access by anyone other than a claimant, an employee of the
16 department, the office of administrative hearings, the department of
17 enterprise services, or their successor agencies.

18 (8) The department may use state and local databases to exclude
19 claimants who may be eligible for unemployment insurance benefits
20 under Title 50 RCW, this title, or are otherwise ineligible or
21 disqualified. An absence of information contained in state and local
22 databases must not be a factor, by itself, to deny a claimant
23 benefits under this title.

24 **Sec. 16.** RCW 42.56.410 and 2019 c 81 s 10 and 2019 c 13 s 68 are
25 each reenacted and amended to read as follows:

26 The following information related to employment security is
27 exempt from disclosure under this chapter:

28 (1) Records maintained by the employment security department and
29 subject to chapter 50.13 or 50A.25 RCW if provided to another
30 individual or organization for operational, research, or evaluation
31 purposes (~~(are exempt from disclosure under this chapter; and)~~);

32 (2) Any inventory or data map records created under RCW
33 50.13.120(1)(b) that reveal the location of personal information or
34 the extent to which it is protected; and

35 (3) Any information or records maintained by the employment
36 security department pursuant to Title 50C RCW (the new title created
37 in section 27 of this act), except:

38 (a) To the person who is the subject of such records or an
39 authorized representative;

1 (b) Where necessary to comply with a lawful court order, judicial
2 warrant signed by a judge appointed pursuant to Article III of the
3 United States Constitution, or judicial subpoena for individual
4 records issued pursuant to the criminal procedure law or the civil
5 practice law and rules; or

6 (c) If disclosed in a manner that could not be used to determine
7 the identities of the claimants or employers to whom the data
8 pertains, alone or in combination with other data.

9 **MISCELLANEOUS PROVISIONS**

10 NEW SECTION. Sec. 17. The department must establish a procedure
11 for review, hearings, and appeals under this title comparable to the
12 provisions of chapter 50.32 RCW, which complies with the
13 confidentiality and privacy protections under sections 13 through 16
14 of this act.

15 NEW SECTION. Sec. 18. (1) The department must create a process
16 by which claimants can notify it of payment errors and for collection
17 and forgiveness of such overpayments. In developing this process, the
18 department must use the provisions of RCW 50.20.190 as a guide and is
19 granted the same authority as provided in RCW 50.20.190(3).

20 (2) The department must create a process by which potential fraud
21 can be reported.

22 (3) The penalties provided in RCW 50.36.010 apply to fraudulent
23 activities under this title.

24 NEW SECTION. Sec. 19. Any assignment, pledge, or encumbrance of
25 any right to benefits under this title which are or may become due or
26 payable under this title must be void. Such rights to benefits under
27 this title must be exempt from levy, execution, attachment, or any
28 other remedy whatsoever provided for the collection of debts.
29 Benefits under this title received by any individual, so long as they
30 are not commingled with other funds of the recipient, must be exempt
31 from any remedy whatsoever for collection of all debts except debts
32 incurred for necessities furnished to such individual or their spouse
33 or dependents during the time when such individual was unemployed.
34 Any waiver of any exemption provided for in this section must be
35 void. Any agreement by an individual to waive, release, or commute

1 their rights to benefits or any other rights under this title must be
2 void.

3 NEW SECTION. **Sec. 20.** The legislature reserves the right to
4 amend or repeal all or any part of this title at any time; and there
5 must be no vested private right of any kind against such amendment or
6 repeal. All the rights, privileges, or immunities conferred by this
7 title or by acts done pursuant thereto must exist subject to the
8 power of the legislature to amend or repeal this title at any time.

9 NEW SECTION. **Sec. 21.** The department must adopt rules as
10 necessary to implement this title.

11 NEW SECTION. **Sec. 22.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 23.** Sections 1 through 4 of this act
16 constitute a new chapter in Title 50C RCW (the new title created in
17 section 27 of this act).

18 NEW SECTION. **Sec. 24.** Sections 5 through 12 of this act
19 constitute a new chapter in Title 50C RCW (the new title created in
20 section 27 of this act).

21 NEW SECTION. **Sec. 25.** Sections 13 through 15 of this act
22 constitute a new chapter in Title 50C RCW (the new title created in
23 section 27 of this act).

24 NEW SECTION. **Sec. 26.** Sections 17 through 20 of this act
25 constitute a new chapter in Title 50C RCW (the new title created in
26 section 27 of this act).

27 NEW SECTION. **Sec. 27.** Sections 1 through 15 and 17 through 22
28 of this act constitute a new title in the Revised Code of Washington,
29 to be codified as Title 50C RCW.

--- END ---