

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1107

Chapter 25, Laws of 2023

68th Legislature
2023 Regular Session

EMPLOYMENT RELATIONSHIP—TERMINOLOGY

EFFECTIVE DATE: July 23, 2023

Passed by the House February 1, 2023
Yeas 97 Nays 0

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate March 22, 2023
Yeas 49 Nays 0

DENNY HECK

President of the Senate

Approved April 6, 2023 9:18 AM

JAY INSLEE

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 **HOUSE BILL 1107** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

April 6, 2023

**Secretary of State
State of Washington**

HOUSE BILL 1107

Passed Legislature - 2023 Regular Session

State of Washington

68th Legislature

2023 Regular Session

By Representatives Fosse, Reed, Berry, Ramel, Doglio, Simmons, Reeves, Kloba, Riccelli, and Ormsby; by request of Employment Security Department

Prefiled 01/03/23. Read first time 01/09/23. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to removing the terms "master" and "servant" from
2 Titles 50 and 50A RCW; amending RCW 50.04.100 and 50A.05.010; and
3 creating a new section.

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

5 **Sec. 1.** RCW 50.04.100 and 1982 1st ex.s. c 18 s 14 are each
6 amended to read as follows:

7 "Employment," subject only to the other provisions of this title,
8 means personal service, of whatever nature, unlimited by ((the
9 ~~relationship of master and servant~~) any employment relationship as
10 known to the common law or any other legal relationship, including
11 service in interstate commerce, performed for wages or under any
12 contract calling for the performance of personal services, written or
13 oral, express or implied.

14 Except as provided by RCW 50.04.145, personal services performed
15 for an employing unit by one or more contractors or subcontractors
16 acting individually or as a partnership, which do not meet the
17 provisions of RCW 50.04.140, shall be considered employment of the
18 employing unit: PROVIDED, HOWEVER, That such contractor or
19 subcontractor shall be an employer under the provisions of this title
20 in respect to personal services performed by individuals for such
21 contractor or subcontractor.

1 **Sec. 2.** RCW 50A.05.010 and 2022 c 233 s 1 are each amended to
2 read as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this title.

5 (1) (a) "Casual labor" means work that:

6 (i) Is performed infrequently and irregularly; and

7 (ii) If performed for an employer, does not promote or advance
8 the employer's customary trade or business.

9 (b) For purposes of casual labor:

10 (i) "Infrequently" means work performed twelve or fewer times per
11 calendar quarter; and

12 (ii) "Irregularly" means work performed not on a consistent
13 cadence.

14 (2) "Child" includes a biological, adopted, or foster child, a
15 stepchild, a child's spouse, or a child to whom the employee stands
16 in loco parentis, is a legal guardian, or is a de facto parent,
17 regardless of age or dependency status.

18 (3) "Commissioner" means the commissioner of the department or
19 the commissioner's designee.

20 (4) "Department" means the employment security department.

21 (5) (a) "Employee" means an individual who is in the employment of
22 an employer.

23 (b) "Employee" does not include employees of the United States of
24 America.

25 (6) "Employee's average weekly wage" means the quotient derived
26 by dividing the employee's total wages during the two quarters of the
27 employee's qualifying period in which total wages were highest by
28 twenty-six. If the result is not a multiple of one dollar, the
29 department must round the result to the next lower multiple of one
30 dollar.

31 (7) (a) "Employer" means: (i) Any individual or type of
32 organization, including any partnership, association, trust, estate,
33 joint stock company, insurance company, limited liability company, or
34 corporation, whether domestic or foreign, or the receiver, trustee in
35 bankruptcy, trustee, or the legal representative of a deceased
36 person, having any person in employment or, having become an
37 employer, has not ceased to be an employer as provided in this title;
38 (ii) the state, state institutions, and state agencies; and (iii) any
39 unit of local government including, but not limited to, a county,

1 city, town, municipal corporation, quasi-municipal corporation, or
2 political subdivision.

3 (b) "Employer" does not include the United States of America.

4 (8) (a) "Employment" means personal service, of whatever nature,
5 unlimited by (~~the relationship of master and servant~~) any
6 employment relationship as known to the common law or any other legal
7 relationship performed for wages or under any contract calling for
8 the performance of personal services, written or oral, express or
9 implied. The term "employment" includes an individual's entire
10 service performed within or without or both within and without this
11 state, if:

12 (i) The service is localized in this state; or

13 (ii) The service is not localized in any state, but some of the
14 service is performed in this state; and

15 (A) The base of operations of the employee is in the state, or if
16 there is no base of operations, then the place from which such
17 service is directed or controlled is in this state; or

18 (B) The base of operations or place from which such service is
19 directed or controlled is not in any state in which some part of the
20 service is performed, but the individual's residence is in this
21 state.

22 (b) "Employment" does not include:

23 (i) Self-employed individuals;

24 (ii) Casual labor;

25 (iii) Services for remuneration when it is shown to the
26 satisfaction of the commissioner that:

27 (A) (I) Such individual has been and will continue to be free from
28 control or direction over the performance of such service, both under
29 his or her contract of service and in fact; and

30 (II) Such service is either outside the usual course of business
31 for which such service is performed, or that such service is
32 performed outside of all the places of business of the enterprises
33 for which such service is performed; and

34 (III) Such individual is customarily engaged in an independently
35 established trade, occupation, profession, or business, of the same
36 nature as that involved in the contract of service; or

37 (B) As a separate alternative:

38 (I) Such individual has been and will continue to be free from
39 control or direction over the performance of such service, both under
40 his or her contract of service and in fact; and

1 (II) Such service is either outside the usual course of business
2 for which such service is performed, or that such service is
3 performed outside of all the places of business of the enterprises
4 for which such service is performed, or the individual is
5 responsible, both under the contract and in fact, for the costs of
6 the principal place of business from which the service is performed;
7 and

8 (III) Such individual is customarily engaged in an independently
9 established trade, occupation, profession, or business, of the same
10 nature as that involved in the contract of service, or such
11 individual has a principal place of business for the work the
12 individual is conducting that is eligible for a business deduction
13 for federal income tax purposes; and

14 (IV) On the effective date of the contract of service, such
15 individual is responsible for filing at the next applicable filing
16 period, both under the contract of service and in fact, a schedule of
17 expenses with the internal revenue service for the type of business
18 the individual is conducting; and

19 (V) On the effective date of the contract of service, or within a
20 reasonable period after the effective date of the contract, such
21 individual has established an account with the department of revenue,
22 and other state agencies as required by the particular case, for the
23 business the individual is conducting for the payment of all state
24 taxes normally paid by employers and businesses and has registered
25 for and received a unified business identifier number from the state
26 of Washington; and

27 (VI) On the effective date of the contract of service, such
28 individual is maintaining a separate set of books or records that
29 reflect all items of income and expenses of the business which the
30 individual is conducting; or

31 (iv) Services that require registration under chapter 18.27 RCW
32 or licensing under chapter 19.28 RCW rendered by an individual when:

33 (A) The individual has been and will continue to be free from
34 control or direction over the performance of the service, both under
35 the contract of service and in fact;

36 (B) The service is either outside the usual course of business
37 for which the service is performed, or the service is performed
38 outside of all the places of business of the enterprise for which the
39 service is performed, or the individual is responsible, both under

1 the contract and in fact, for the costs of the principal place of
2 business from which the service is performed;

3 (C) The individual is customarily engaged in an independently
4 established trade, occupation, profession, or business, of the same
5 nature as that involved in the contract of service, or the individual
6 has a principal place of business for the business the individual is
7 conducting that is eligible for a business deduction for federal
8 income tax purposes, other than that furnished by the employer for
9 which the business has contracted to furnish services;

10 (D) On the effective date of the contract of service, the
11 individual is responsible for filing at the next applicable filing
12 period, both under the contract of service and in fact, a schedule of
13 expenses with the internal revenue service for the type of business
14 the individual is conducting;

15 (E) On the effective date of the contract of service, or within a
16 reasonable period after the effective date of the contract, the
17 individual has an active and valid certificate of registration with
18 the department of revenue, and an active and valid account with any
19 other state agencies as required by the particular case, for the
20 business the individual is conducting for the payment of all state
21 taxes normally paid by employers and businesses and has registered
22 for and received a unified business identifier number from the state
23 of Washington;

24 (F) On the effective date of the contract of service, the
25 individual is maintaining a separate set of books or records that
26 reflect all items of income and expenses of the business that the
27 individual is conducting; and

28 (G) On the effective date of the contract of service, the
29 individual has a valid contractor registration pursuant to chapter
30 18.27 RCW or an electrical contractor license pursuant to chapter
31 19.28 RCW.

32 (9) "Employment benefits" means all benefits provided or made
33 available to employees by an employer, including group life
34 insurance, health insurance, disability insurance, sick leave, annual
35 leave, educational benefits, and pensions.

36 (10) "Family leave" means any leave taken by an employee from
37 work:

38 (a) To participate in providing care, including physical or
39 psychological care, for a family member of the employee made
40 necessary by a serious health condition of the family member;

1 (b) To bond with the employee's child during the first twelve
2 months after the child's birth, or the first twelve months after the
3 placement of a child under the age of eighteen with the employee;

4 (c) Because of any qualifying exigency as permitted under the
5 federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(E)
6 and 29 C.F.R. Sec. 825.126(b)(1) through (9), as they existed on
7 October 19, 2017, for family members as defined in subsection (11) of
8 this section; or

9 (d) During the seven calendar days following the death of the
10 family member for whom the employee:

11 (i) Would have qualified for medical leave under subsection (15)
12 of this section for the birth of their child; or

13 (ii) Would have qualified for family leave under (b) of this
14 subsection.

15 (11) "Family member" means a child, grandchild, grandparent,
16 parent, sibling, or spouse of an employee, and also includes any
17 individual who regularly resides in the employee's home or where the
18 relationship creates an expectation that the employee care for the
19 person, and that individual depends on the employee for care. "Family
20 member" includes any individual who regularly resides in the
21 employee's home, except that it does not include an individual who
22 simply resides in the same home with no expectation that the employee
23 care for the individual.

24 (12) "Grandchild" means a child of the employee's child.

25 (13) "Grandparent" means a parent of the employee's parent.

26 (14) "Health care provider" means: (a) A person licensed as a
27 physician under chapter 18.71 RCW or an osteopathic physician and
28 surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced
29 registered nurse practitioner under chapter 18.79 RCW; or (c) any
30 other person determined by the commissioner to be capable of
31 providing health care services.

32 (15) "Medical leave" means any leave taken by an employee from
33 work made necessary by the employee's own serious health condition.

34 (16) "Paid time off" includes vacation leave, personal leave,
35 medical leave, sick leave, compensatory leave, or any other paid
36 leave offered by an employer under the employer's established policy.

37 (17) "Parent" means the biological, adoptive, de facto, or foster
38 parent, stepparent, or legal guardian of an employee or the
39 employee's spouse, or an individual who stood in loco parentis to an
40 employee when the employee was a child.

1 (18) "Period of incapacity" means an inability to work, attend
2 school, or perform other regular daily activities because of a
3 serious health condition, treatment of that condition or recovery
4 from it, or subsequent treatment in connection with such inpatient
5 care.

6 (19) "Postnatal" means the first six weeks after birth.

7 (20) "Premium" or "premiums" means the payments required by RCW
8 50A.10.030 and paid to the department for deposit in the family and
9 medical leave insurance account under RCW 50A.05.070.

10 (21) "Qualifying period" means the first four of the last five
11 completed calendar quarters or, if eligibility is not established,
12 the last four completed calendar quarters immediately preceding the
13 application for leave.

14 (22)(a) "Remuneration" means all compensation paid for personal
15 services including commissions and bonuses and the cash value of all
16 compensation paid in any medium other than cash.

17 (b) Previously accrued compensation, other than severance pay or
18 payments received pursuant to plant closure agreements, when assigned
19 to a specific period of time by virtue of a collective bargaining
20 agreement, individual employment contract, customary trade practice,
21 or request of the individual compensated, is considered remuneration
22 for the period to which it is assigned. Assignment clearly occurs
23 when the compensation serves to make the individual eligible for all
24 regular fringe benefits for the period to which the compensation is
25 assigned.

26 (c) Remuneration also includes settlements or other proceeds
27 received by an individual as a result of a negotiated settlement for
28 termination of an individual written employment contract prior to its
29 expiration date. The proceeds are deemed assigned in the same
30 intervals and in the same amount for each interval as compensation
31 was allocated under the contract.

32 (d) Remuneration does not include:

33 (i) The payment of tips;

34 (ii) Supplemental benefit payments made by an employer to an
35 employee in addition to any paid family or medical leave benefits
36 received by the employee; or

37 (iii) Payments to members of the armed forces of the United
38 States, including the organized militia of the state of Washington,
39 for the performance of duty for periods not exceeding seventy-two
40 hours at a time.

1 (23)(a) "Serious health condition" means an illness, injury,
2 impairment, or physical or mental condition that involves:

3 (i) Inpatient care in a hospital, hospice, or residential medical
4 care facility, including any period of incapacity; or

5 (ii) Continuing treatment by a health care provider. A serious
6 health condition involving continuing treatment by a health care
7 provider includes any one or more of the following:

8 (A) A period of incapacity of more than three consecutive, full
9 calendar days, and any subsequent treatment or period of incapacity
10 relating to the same condition, that also involves:

11 (I) Treatment two or more times, within thirty days of the first
12 day of incapacity, unless extenuating circumstances exist, by a
13 health care provider, by a nurse or physician's assistant under
14 direct supervision of a health care provider, or by a provider of
15 health care services, such as a physical therapist, under orders of,
16 or on referral by, a health care provider; or

17 (II) Treatment by a health care provider on at least one occasion
18 which results in a regimen of continuing treatment under the
19 supervision of the health care provider;

20 (B) Any period of incapacity due to pregnancy, or for prenatal
21 care;

22 (C) Any period of incapacity or treatment for such incapacity due
23 to a chronic serious health condition. A chronic serious health
24 condition is one which:

25 (I) Requires periodic visits, defined as at least twice a year,
26 for treatment by a health care provider, or by a nurse under direct
27 supervision of a health care provider;

28 (II) Continues over an extended period of time, including
29 recurring episodes of a single underlying condition; and

30 (III) May cause episodic rather than a continuing period of
31 incapacity, including asthma, diabetes, and epilepsy;

32 (D) A period of incapacity which is permanent or long term due to
33 a condition for which treatment may not be effective. The employee or
34 family member must be under the continuing supervision of, but need
35 not be receiving active treatment by, a health care provider,
36 including Alzheimer's, a severe stroke, or the terminal stages of a
37 disease; or

38 (E) Any period of absence to receive multiple treatments,
39 including any period of recovery from the treatments, by a health
40 care provider or by a provider of health care services under orders

1 of, or on referral by, a health care provider, either for: (I)
2 Restorative surgery after an accident or other injury; or (II) a
3 condition that would likely result in a period of incapacity of more
4 than three consecutive, full calendar days in the absence of medical
5 intervention or treatment, such as cancer, severe arthritis, or
6 kidney disease.

7 (b) The requirement in (a)(i) and (ii) of this subsection for
8 treatment by a health care provider means an in-person visit to a
9 health care provider. The first, or only, in-person treatment visit
10 must take place within seven days of the first day of incapacity.

11 (c) Whether additional treatment visits or a regimen of
12 continuing treatment is necessary within the thirty-day period shall
13 be determined by the health care provider.

14 (d) The term extenuating circumstances in (a)(ii)(A)(I) of this
15 subsection means circumstances beyond the employee's control that
16 prevent the follow-up visit from occurring as planned by the health
17 care provider. Whether a given set of circumstances are extenuating
18 depends on the facts. For example, extenuating circumstances exist if
19 a health care provider determines that a second in-person visit is
20 needed within the thirty-day period, but the health care provider
21 does not have any available appointments during that time period.

22 (e) Treatment for purposes of (a) of this subsection includes,
23 but is not limited to, examinations to determine if a serious health
24 condition exists and evaluations of the condition. Treatment does not
25 include routine physical examinations, eye examinations, or dental
26 examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of
27 continuing treatment includes, but is not limited to, a course of
28 prescription medication, such as an antibiotic, or therapy requiring
29 special equipment to resolve or alleviate the health condition, such
30 as oxygen. A regimen of continuing treatment that includes taking
31 over-the-counter medications, such as aspirin, antihistamines, or
32 salves, or bed rest, drinking fluids, exercise, and other similar
33 activities that can be initiated without a visit to a health care
34 provider, is not, by itself, sufficient to constitute a regimen of
35 continuing treatment for purposes of this title.

36 (f) Conditions for which cosmetic treatments are administered,
37 such as most treatments for acne or plastic surgery, are not serious
38 health conditions unless inpatient hospital care is required or
39 unless complications develop. Ordinarily, unless complications arise,
40 the common cold, the flu, ear aches, upset stomach, minor ulcers,

1 headaches other than migraines, routine dental or orthodontia
2 problems, and periodontal disease are examples of conditions that are
3 not serious health conditions and do not qualify for leave under this
4 title. Restorative dental or plastic surgery after an injury or
5 removal of cancerous growths are serious health conditions provided
6 all the other conditions of this section are met. Mental illness
7 resulting from stress or allergies may be serious health conditions,
8 but only if all the conditions of this section are met.

9 (g) (i) Substance abuse may be a serious health condition if the
10 conditions of this section are met. However, leave may only be taken
11 for treatment for substance abuse by a health care provider or by a
12 licensed substance abuse treatment provider. Absence because of the
13 employee's use of the substance, rather than for treatment, does not
14 qualify for leave under this title.

15 (ii) Treatment for substance abuse does not prevent an employer
16 from taking employment action against an employee. The employer may
17 not take action against the employee because the employee has
18 exercised his or her right to take medical leave for treatment.
19 However, if the employer has an established policy, applied in a
20 nondiscriminatory manner that has been communicated to all employees,
21 that provides under certain circumstances an employee may be
22 terminated for substance abuse, pursuant to that policy the employee
23 may be terminated whether or not the employee is presently taking
24 medical leave. An employee may also take family leave to care for a
25 covered family member who is receiving treatment for substance abuse.
26 The employer may not take action against an employee who is providing
27 care for a covered family member receiving treatment for substance
28 abuse.

29 (h) Absences attributable to incapacity under (a) (ii) (B) or (C)
30 of this subsection qualify for leave under this title even though the
31 employee or the family member does not receive treatment from a
32 health care provider during the absence, and even if the absence does
33 not last more than three consecutive, full calendar days. For
34 example, an employee with asthma may be unable to report for work due
35 to the onset of an asthma attack or because the employee's health
36 care provider has advised the employee to stay home when the pollen
37 count exceeds a certain level. An employee who is pregnant may be
38 unable to report to work because of severe morning sickness.

39 (24) "Service is localized in this state" has the same meaning as
40 described in RCW 50.04.120.

1 (25) "Spouse" means a husband or wife, as the case may be, or
2 state registered domestic partner.

3 (26) "State average weekly wage" means the most recent average
4 weekly wage calculated under RCW 50.04.355 and available on January
5 1st of each year.

6 (27) "Supplemental benefit payments" means payments made by an
7 employer to an employee as salary continuation or as paid time off.
8 Such payments must be in addition to any paid family or medical leave
9 benefits the employee is receiving.

10 (28) "Typical workweek hours" means:

11 (a) For an hourly employee, the average number of hours worked
12 per week by an employee within the qualifying period; and

13 (b) Forty hours for a salaried employee, regardless of the number
14 of hours the salaried employee typically works.

15 (29) "Wage" or "wages" means:

16 (a) For the purpose of premium assessment, the remuneration paid
17 by an employer to an employee. The maximum wages subject to a premium
18 assessment are those wages as set by the commissioner under RCW
19 50A.10.030;

20 (b) For the purpose of payment of benefits, the remuneration paid
21 by one or more employers to an employee for employment during the
22 employee's qualifying period. At the request of an employee, wages
23 may be calculated on the basis of remuneration payable. The
24 department shall notify each employee that wages are calculated on
25 the basis of remuneration paid, but at the employee's request a
26 redetermination may be performed and based on remuneration payable;
27 and

28 (c) For the purpose of a self-employed person electing coverage
29 under RCW 50A.10.010, the meaning is defined by rule.

30 NEW SECTION. **Sec. 3.** In enacting this act, the legislature only
31 intends to amend the Revised Code of Washington to use inclusive
32 language. The legislature does not intend to either increase or
33 reduce the scope of the definitions of "employment" contained in
34 Title 50 or 50A RCW.

Passed by the House February 1, 2023.
Passed by the Senate March 22, 2023.
Approved by the Governor April 6, 2023.
Filed in Office of Secretary of State April 6, 2023.

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