

RCW 50.44.050 Benefits payable, terms and conditions—"Academic year" defined. Except as otherwise provided in subsections (1) through (5) of this section, benefits based on services in employment covered by or pursuant to this chapter shall be payable on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this title.

(1) Benefits based on service in an instructional, research, or principal administrative capacity for an educational institution shall not be paid to an individual for any week of unemployment which commences during the period between two successive academic years or between two successive academic terms within an academic year (or, when an agreement provides instead for a similar period between two regular but not successive terms within an academic year, during such period) if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for an educational institution in the second of such academic years or terms.

(2) Benefits shall not be paid based on services in any other capacity for an educational institution for any week of unemployment which commences during the period between two successive academic years or between two successive academic terms within an academic year, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms: PROVIDED, That if benefits are denied to any individual under this subsection and that individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual is entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection.

(3) Benefits shall not be paid based on any services described in subsections (1) and (2) of this section for any week of unemployment which commences during an established and customary vacation period or holiday recess if such individual performs such services for an educational institution in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services for an educational institution in the period immediately following such vacation period or holiday recess.

(4) Benefits shall not be paid (as specified in subsections (1), (2), or (3) of this section) based on any services described in subsections (1) or (2) of this section to any individual who performed such services in any educational institution while in the employ of an educational service district which is established pursuant to chapter 28A.310 RCW and exists to provide services to local school districts.

(5) When an individual performs services for more than one educational institution in an academic year or term, wages earned by the individual from those educational institutions that do not provide a contract or reasonable assurance of employment in the subsequent academic year or term may be used to establish a claim for benefits, even if a contract or reasonable assurance exists for another educational institution.

(6) As used in this section, "academic year" means: Fall, winter, spring, and summer quarters or comparable semesters unless, based upon

objective criteria including enrollment and staffing, the quarter or comparable semester is not in fact a part of the academic year for the particular institution. [2018 c 97 § 1; 2001 c 100 § 2; 1998 c 233 § 2; 1995 c 296 § 2; 1990 c 33 § 587; 1984 c 140 § 2; 1983 1st ex.s. c 23 § 23; 1981 c 35 § 12; 1980 c 74 § 2; 1977 ex.s. c 292 § 18; 1975 1st ex.s. c 228 § 17; 1973 c 73 § 10; 1971 c 3 § 22.]

Conflict with federal requirements—2018 c 97: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and this finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2018 c 97 § 4.]

Application—2018 c 97: "This act applies to claimed weeks of unemployment on or after October 1, 2018." [2018 c 97 § 6.]

Intent—Findings—2001 c 100: "It is the intent of the legislature to clarify requirements related to the use of base year hours and wages for certain employees at educational institutions, for the purpose of determining eligibility for unemployment insurance benefits.

The legislature finds that, unless clarified, Washington's unemployment compensation law may be out of conformity with the federal unemployment tax act, which poses a significant economic risk to the state's private employers, the state's general fund, and to the administration of the state's unemployment insurance system. It is the intent of the legislature to change Washington's unemployment law only to the extent necessary to ensure it conforms with federal law governing the use of base year hours and wages earned at educational institutions.

The legislature finds that the United States department of labor will rely on state law and its application as interpreted in state court decisions, especially *Pechman v. Employment Security*, to determine if Washington state law conforms to federal guidelines in this area. Therefore, it is the intent of the legislature to clearly communicate to the courts that the purpose for the section 2, chapter 100, Laws of 2001 amendment to RCW 50.44.050 is to interpret state law in a manner that conforms to federal guidelines.

The legislature finds that federal law requires that school hours and wages in the base year must be restricted from use to establish eligibility for an unemployment compensation claim for employees of educational institutions during specified times. Further, federal law specifies that when required to restrict base year school hours and wages, it must be any and all hours and wages from any and all educational institutions, not just the hours and wages from institutions where there is a reasonable assurance of returning to work following a customary nonwork period. Therefore, it is the intent of the legislature to restrict hours worked and wages earned as required by federal law.

Customary nonwork periods for educational institutions include:

- (1) The period between two successive academic years;
- (2) The period between two successive academic terms within an academic year;
- (3) A similar period between two regular but not successive terms within an academic year; or
- (4) An established and customary vacation period or holiday recess.

Restricted use of base year hours and wages from educational institutions shall occur only in the circumstances described in RCW 50.44.050 (as amended by chapter 100, Laws of 2001) and in RCW 50.44.053, and as further defined in rules promulgated by the employment security department." [2001 c 100 § 1.]

Conflict with federal requirements—2001 c 100: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2001 c 100 § 3.]

Effective date—2001 c 100: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 2001]." [2001 c 100 § 4.]

Intent—Findings—1998 c 233: "It is the intent of the legislature to clarify requirements related to unemployment compensation for employees at educational institutions.

The legislature finds that, unless clarified, Washington's unemployment compensation law may be out of conformity with the federal unemployment tax act, which finding poses a significant economic risk to the state's private employers and to the administration of the state's unemployment insurance system. It is the intent of the legislature, by the 1998, chapter 233 amendments to RCW 50.44.050 and 50.44.053, to bring Washington's unemployment compensation law into conformity with federal law in these areas of concern.

The legislature finds that some instructional staff at the state's educational institutions receive an appointment of employment for an indefinite period while others may face circumstances that do not provide a reasonable expectation of employment during an ensuing academic year or term.

Therefore, it is the intent of the legislature that the employment security department continue to make determinations of educational employees' eligibility for unemployment compensation for the period between academic years or terms based on a finding of reasonable assurance that the employee will have employment for the ensuing academic year or term and that the determination in each employee's case is made on an individual basis, consistent with federal guidelines. This determination must take into consideration contingencies that may exist in fact in an individual case. The 1998,

chapter 233 amendment to RCW 50.44.053 is not intended to change the practice used by the employment security department when determining reasonable assurance. If, during fact-finding, there is a disagreement about whether an individual has reasonable assurance, the educational institution must provide documentation that reasonable assurance exists for that individual." [1998 c 233 § 1.]

Conflict with federal requirements—1998 c 233: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1998 c 233 § 5.]

Effective date—1998 c 233: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 1998]." [1998 c 233 § 6.]

Severability—Conflict with federal requirements—Effective date—1995 c 296: See notes following RCW 50.04.320.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Effective date—Applicability—1984 c 140: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 7, 1984]. This act shall apply to weeks of unemployment beginning on or after April 1, 1984." [1984 c 140 § 3.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Severability—Effective dates—1980 c 74: See notes following RCW 50.04.323.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective dates—1973 c 73: See note following RCW 50.04.030.