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SENATE BILL 5459

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State of Washington                      64th Legislature                      2015 Regular Session

By Senators Keiser, Hasegawa, Conway, McCoy, Kohl-Welles, and Chase

Read first time 01/22/15. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to implementing family and medical leave  
2 insurance; amending RCW 49.86.005, 49.86.010, 49.86.020, 49.86.030,  
3 49.86.050, 49.86.060, 49.86.070, 49.86.080, 49.86.090, 49.86.100,  
4 49.86.110, 49.86.120, 49.86.130, 49.86.140, 49.86.160, 49.86.170,  
5 49.86.180, and 49.86.210; reenacting and amending RCW 43.79A.040,  
6 50.29.021, and 34.05.328; adding new sections to chapter 49.86 RCW;  
7 and adding a new section to chapter 82.04 RCW.

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

9            **Sec. 1.** RCW 49.86.005 and 2007 c 357 s 1 are each amended to  
10 read as follows:

11            The legislature finds that, although family and medical leave  
12 laws have assisted individuals to balance the demands of the  
13 workplace with their family responsibilities, more needs to be done  
14 to achieve the goals of parent and child bonding, family care,  
15 children and family health, workforce stability, and economic  
16 security. In particular, the legislature finds that many individuals  
17 do not have access to family and medical leave laws, and those who do  
18 may not be in a financial position to take family and medical leave  
19 that is unpaid, and that employer-paid benefits meet only a  
20 relatively small part of this need. The legislature declares it to be  
21 in the public interest to establish a program that: (1) Allows

1 parents to bond with a newborn or newly placed child, and workers to  
2 care for family members with a serious health condition or to recover  
3 from their own serious health condition; (2) provides limited and  
4 additional income support for a reasonable period while an individual  
5 is away from work on family and medical leave; (3) reduces the impact  
6 on state income support programs by increasing an individual's  
7 ability to provide caregiving services for ((a child)) family members  
8 while maintaining an employment relationship; and (4) establishes a  
9 wage replacement benefit to be coordinated with current existing  
10 state and federal family and medical leave laws.

11 **Sec. 2.** RCW 49.86.010 and 2007 c 357 s 3 are each amended to  
12 read as follows:

13 The definitions in this section apply throughout this chapter  
14 unless the context clearly requires otherwise.

15 (1)(a) With respect to leave for the birth or placement of a  
16 child, "application year" means the twelve-month period beginning on  
17 the date of the birth or placement of the child.

18 (b) With respect to leave for a family member's serious health  
19 condition or the individual's serious health condition, "application  
20 year" means the twelve-month period beginning on the first day of the  
21 calendar week in which an individual files an initial application for  
22 family and medical leave insurance benefits ((and, thereafter, the  
23 twelve-month period beginning with the first day of the calendar week  
24 in which the individual next files an application for family leave  
25 insurance benefits after the expiration of the individual's last  
26 preceding application year)).

27 (c) An application year may not begin before the individual's  
28 last preceding application year has expired.

29 (2) "Calendar quarter" means the same as in RCW 50.04.050.

30 (3) "Child," ((means a biological or an adopted child)) "health  
31 care provider," "parent," "serious health condition," and "spouse"  
32 mean the same as in RCW 49.78.020.

33 (4) "Commissioner" means the commissioner of the department.

34 (5) "Department" means the ((state agency to be directed to  
35 administer the family leave insurance program.

36 (5) "Director" means the director of the)) employment security  
37 department.

38 (6) "Employer" means: (a) The same as in RCW 50.04.080; and (b)  
39 the state and its political subdivisions.

1 (7) "Employment" has the meaning provided in RCW 50.04.100.

2 (8) "Family and medical leave" means leave ~~((:-(a) Because of the~~  
3 ~~birth of a child of the employee and in order to care for the child;~~  
4 ~~or (b) because of the placement of a child with the employee for~~  
5 ~~adoption))~~ for a family member's serious health condition, leave for  
6 the birth or placement of a child, and leave for the individual's  
7 serious health condition as these types of leave are defined in RCW  
8 49.78.020 and described in RCW 49.78.220.

9 (9) "Family and medical leave insurance benefits" means the  
10 benefits payable under RCW 49.86.050 and 49.86.060.

11 (10) "Family member" means a child, spouse, or parent of the  
12 individual, or pursuant to section 13 of this act, a designated  
13 person.

14 (11) "Federal family and medical leave act" means the federal  
15 family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3,  
16 107 Stat. 6).

17 ~~((11))~~ (12) "Premium" or "premiums" means payments required by  
18 this chapter to be made to the department for the family and medical  
19 leave insurance account under RCW 49.86.170.

20 (13) "Qualifying year" means the first four of the last five  
21 completed calendar quarters or, if eligibility is not established,  
22 the last four completed calendar quarters immediately preceding the  
23 first day of the individual's application year.

24 ~~((12) "Regularly working" means the average number of hours per~~  
25 ~~workweek that an individual worked in the two quarters of the~~  
26 ~~individual's qualifying year in which total wages were highest.))~~

27 (14) "Wages" means the same as "wages" for the purpose of payment  
28 of contributions in RCW 50.04.320(1).

29 NEW SECTION. Sec. 3. A new section is added to chapter 49.86  
30 RCW to read as follows:

31 The definitions of "employer" and "employment" in section 1 of  
32 the railroad unemployment insurance act (45 U.S.C. Sec. 351) also  
33 apply throughout this chapter unless the context clearly requires  
34 otherwise.

35 **Sec. 4.** RCW 49.86.020 and 2007 c 357 s 4 are each amended to  
36 read as follows:

1 (1) The department shall establish and administer a family and  
2 medical leave insurance program and pay family and medical leave  
3 insurance benefits as specified in this chapter.

4 (2) The department shall establish procedures and forms for  
5 filing claims for benefits under this chapter. The department shall  
6 notify the employer within five business days of a claim being filed  
7 under RCW 49.86.030.

8 (3) The department may require that an individual attest that:

9 (a) There has been a birth or placement of a child, or the  
10 individual or the individual's family member has a serious health  
11 condition, as applicable;

12 (b) The individual is not earning waiting period credits or  
13 receiving benefits under chapter 7.68 RCW, Title 50 or 51 RCW, or  
14 other applicable federal or state crime victims' compensation,  
15 unemployment compensation, industrial insurance, or disability  
16 insurance laws; and

17 (c) The individual's serious health condition is not a result of  
18 the individual's perpetration of a gross misdemeanor or felony.

19 (4) The department may require that a claim for benefits under  
20 this chapter be supported by a certification issued by the health  
21 care provider providing health care to the individual or the  
22 individual's family member, as applicable.

23 (5) The department shall use information sharing and integration  
24 technology to facilitate the disclosure of relevant information or  
25 records by ~~((the employment security department))~~ another state  
26 agency, so long as an individual consents to the disclosure as  
27 required under RCW 49.86.030~~((+4))~~ (1)(d).

28 ~~((+4))~~ (6) Information contained in the files and records  
29 pertaining to an individual under this chapter are confidential and  
30 not open to public inspection, other than to public employees in the  
31 performance of their official duties. However, the individual or an  
32 authorized representative of an individual may review the records or  
33 receive specific information from the records on the presentation of  
34 the signed authorization of the individual. An employer or the  
35 employer's duly authorized representative may review the records of  
36 an individual employed by the employer in connection with a pending  
37 claim. At the department's discretion, other persons may review  
38 records when such persons are rendering assistance to the department  
39 at any stage of the proceedings on any matter pertaining to the  
40 administration of this chapter.

1        ~~((+5))~~ (7) The department shall develop and implement an  
2 outreach program to ensure that individuals who may be eligible to  
3 receive family and medical leave insurance benefits under this  
4 chapter are made aware of these benefits. Outreach information shall  
5 explain, in an easy to understand format, eligibility requirements,  
6 the claims process, weekly benefit amounts, maximum benefits payable,  
7 notice and medical certification requirements, reinstatement and  
8 nondiscrimination rights, confidentiality, and ~~((coordination of~~  
9 ~~leave))~~ the relationship between employment protection, leave from  
10 employment, and wage replacement benefits under this chapter and  
11 other laws, collective bargaining agreements, and employer policies.  
12 Outreach information shall be prepared by the department with  
13 technical assistance from the department of labor and industries.  
14 Outreach information shall be available in English and other primary  
15 languages as defined in RCW 74.04.025.

16        **Sec. 5.** RCW 49.86.030 and 2013 2nd sp.s. c 26 s 1 are each  
17 amended to read as follows:

18        ~~((When the legislature has specifically appropriated funding and~~  
19 ~~enacted an implementation date for benefits, then beginning on that~~  
20 ~~specified date,))~~ (1) Beginning October 1, 2017, family and medical  
21 leave insurance benefits are payable to an individual during a period  
22 in which the individual is unable to perform his or her regular or  
23 customary work because he or she is on family and medical leave if  
24 the individual:

25        ~~((+1))~~ (a) Files a claim for benefits ~~((in each week in which~~  
26 ~~the individual is on family leave, and))~~ as required by rules adopted  
27 by the ~~((director))~~ commissioner;

28        ~~((+2))~~ (b) Has been employed for at least six hundred eighty  
29 hours ~~((in employment))~~ during the individual's qualifying year;

30        ~~((+3))~~ (c) Establishes an application year. An application year  
31 may not be established if the qualifying year includes hours worked  
32 before establishment of a previous application year;

33        ~~((+4))~~ (d) Consents to the disclosure of information or records  
34 deemed private and confidential under ~~((chapter 50.13 RCW))~~ state  
35 law. Initial disclosure of this information and these records by  
36 ~~((the employment security department))~~ another state agency to the  
37 department is solely for purposes related to the administration of  
38 this chapter. Further disclosure of this information or these records  
39 is subject to RCW 49.86.020~~((+3))~~ (5) and section 16 of this act;

1       (~~(5)~~) (e) Discloses whether or not he or she owes child support  
2 obligations as defined in RCW 50.40.050; (~~and~~

3 ~~(6) Documents that he or she has provided)~~ (f) Provides the  
4 employer from whom family and medical leave is to be taken with  
5 written notice of the individual's intention to take family and  
6 medical leave in the same manner as an employee is required to  
7 provide notice in RCW 49.78.250 and, in the individual's claim for  
8 benefits, attests that written notice has been provided; and

9       (g) Provides a document authorizing the family member's or  
10 individual's health care provider, as applicable, to disclose the  
11 family member's or individual's health care information in the form  
12 of the certification of a serious health condition.

13       (2)(a) With respect to leave for the birth or placement of a  
14 child or a family member's serious health condition, family and  
15 medical leave insurance benefits are payable beginning October 1,  
16 2017.

17       (b) With respect to leave for an individual's serious health  
18 condition, family and medical leave insurance benefits are payable  
19 beginning October 1, 2018.

20       NEW SECTION. Sec. 6. A new section is added to chapter 49.86  
21 RCW to read as follows:

22       With respect to leave for the individual's serious health  
23 condition, an individual is disqualified from family and medical  
24 leave insurance benefits beginning with the first day of the calendar  
25 week, and continuing for the next fifty-two consecutive weeks, in  
26 which the individual is suffering from a serious health condition  
27 resulting from the individual's perpetration of a gross misdemeanor  
28 or felony.

29       Sec. 7. RCW 49.86.050 and 2007 c 357 s 7 are each amended to  
30 read as follows:

31       (1) The maximum number of weeks during which family and medical  
32 leave insurance benefits are payable in an application year is (~~five~~  
33 weeks)) twelve weeks for leave for a family member's serious health  
34 condition and for the birth or placement of a child, plus twelve  
35 weeks for the individual's serious health condition. However,  
36 benefits are not payable during a waiting period consisting of the  
37 first seven calendar days of family and medical leave taken in an  
38 application year with respect to a particular type of family and

1 medical leave, whether the first seven calendar days of family and  
2 medical leave are employer paid or unpaid.

3 (2)(a) The first payment of benefits must be made to an  
4 individual within two weeks after the completed claim is (~~filed~~)  
5 received or the family and medical leave began, whichever is later,  
6 and subsequent payments must be made (~~semimonthly~~) biweekly  
7 thereafter.

8 (b) The payment of benefits under this chapter shall not be  
9 considered a binding determination of the obligations of the  
10 department under this chapter. The acceptance of compensation by the  
11 individual shall likewise not be considered a binding determination  
12 of his or her rights under this chapter. Whenever any payment of  
13 benefits under this chapter has been made and timely appeal therefrom  
14 has been made where the final decision is that the payment was  
15 improper, the individual shall repay it and recoupment may be made  
16 from any future payment due to the individual on any claim under this  
17 chapter. The (~~director~~) commissioner may exercise his or her  
18 discretion to waive, in whole or in part, the amount of any such  
19 payments where the recovery would be against equity and good  
20 conscience.

21 (c) If an individual dies before he or she receives a payment of  
22 benefits, the payment shall be made by the department and distributed  
23 consistent with the terms of the decedent's will or, if the decedent  
24 dies intestate, consistent with the terms of RCW 11.04.015.

25 **Sec. 8.** RCW 49.86.060 and 2007 c 357 s 8 are each amended to  
26 read as follows:

27 The amount of family and medical leave insurance benefits shall  
28 be determined as follows:

29 (1) (~~The~~) An individual's weekly benefit shall be (~~two hundred~~  
30 ~~fifty dollars per week for an individual who at the time of beginning~~  
31 ~~family leave was regularly working thirty five hours or more per~~  
32 ~~week~~) an amount equal to five and two-tenths percent of the average  
33 quarterly wages of the individual's total wages during the two  
34 quarters of the individual's qualifying year in which such total  
35 wages were highest.

36 (2) (~~If an individual who at the time of beginning family leave~~  
37 ~~was regularly working thirty five hours or more per week is on family~~  
38 ~~leave for less than thirty five hours but at least eight hours in a~~  
39 ~~week, the individual's weekly benefit shall be .025 times the maximum~~

1 ~~weekly benefit times the number of hours of family leave taken in the~~  
2 ~~week.)) Beginning October 1, 2017, the maximum weekly benefit amount~~  
3 ~~shall be one thousand dollars. By September 30, 2017, and by each~~  
4 ~~subsequent September 30th, the department shall calculate to the~~  
5 ~~nearest dollar adjusted maximum weekly benefit amounts to account for~~  
6 ~~inflation using the consumer price index for urban wage earners and~~  
7 ~~clerical workers, CPI-W, or a successor index, for the twelve~~  
8 ~~completed calendar months before each September 30th as calculated by~~  
9 ~~the United States department of labor. The adjusted maximum weekly~~  
10 ~~benefit amounts calculated under this subsection take effect on the~~  
11 ~~following January 1st.~~

12 (3) Benefits are not payable for less than eight hours of family  
13 and medical leave taken in a week.

14 ~~((3) For an individual who at the time of beginning family leave~~  
15 ~~was regularly working less than thirty five hours per week, the~~  
16 ~~department shall calculate a prorated schedule for a weekly benefit~~  
17 ~~amount and a minimum number of hours of family leave that must be~~  
18 ~~taken in a week for benefits to be payable, with the prorated~~  
19 ~~schedule based on the amounts and the calculations specified under~~  
20 ~~subsections (1) and (2) of this section.))~~

21 (4) If an individual discloses that he or she owes child support  
22 obligations under RCW 49.86.030 and the department determines that  
23 the individual is eligible for benefits, the department shall notify  
24 the applicable state or local child support enforcement agency and  
25 deduct and withhold an amount from benefits in a manner consistent  
26 with RCW 50.40.050.

27 ~~((5) If the internal revenue service determines that family~~  
28 ~~leave insurance benefits under this chapter are subject to federal~~  
29 ~~income tax and an individual elects to have federal income tax~~  
30 ~~deducted and withheld from benefits, the department shall deduct and~~  
31 ~~withhold the amount specified in the federal internal revenue code in~~  
32 ~~a manner consistent with RCW 49.86.070.))~~

33 **Sec. 9.** RCW 49.86.070 and 2007 c 357 s 9 are each amended to  
34 read as follows:

35 ~~((1))~~ If the internal revenue service determines that family  
36 and medical leave insurance benefits under this chapter are subject  
37 to federal income tax, the department must advise an individual  
38 filing a new claim for family and medical leave insurance benefits,  
39 at the time of filing such claim, that(~~(+~~

1       ~~(a)) the internal revenue service has determined that benefits~~  
2       ~~are subject to federal income tax((+~~

3       ~~(b)) and requirements exist pertaining to estimated tax~~  
4       ~~payments((+~~

5       ~~(c) The individual may elect to have federal income tax deducted~~  
6       ~~and withheld from the individual's payment of benefits at the amount~~  
7       ~~specified in the federal internal revenue code; and~~

8       ~~(d) The individual is permitted to change a previously elected~~  
9       ~~withholding status.~~

10       ~~(2) Amounts deducted and withheld from benefits must remain in~~  
11       ~~the family leave insurance account until transferred to the federal~~  
12       ~~taxing authority as a payment of income tax.~~

13       ~~(3) The director shall follow all procedures specified by the~~  
14       ~~federal internal revenue service pertaining to the deducting and~~  
15       ~~withholding of income tax)).~~

16       **Sec. 10.** RCW 49.86.080 and 2007 c 357 s 10 are each amended to  
17       read as follows:

18       (1) If family and medical leave insurance benefits are paid  
19       erroneously or as a result of willful misrepresentation, or if a  
20       claim for family and medical leave benefits is rejected after  
21       benefits are paid, RCW 51.32.240 shall apply, except that appeals are  
22       governed by RCW 49.86.120, penalties are paid into the family and  
23       medical leave insurance account, and the department shall seek  
24       repayment of benefits from the recipient. The department shall issue  
25       an overpayment assessment setting forth the reasons for, and the  
26       amount of, the overpayment.

27       (2) Whenever such an overpayment assessment becomes conclusive  
28       and final, the department may file with the superior court clerk of  
29       any county within the state a warrant in the amount of the  
30       overpayment assessment plus a filing fee under RCW 36.18.012(10).  
31       However, the department must first give at least twenty days' notice  
32       by certified mail return receipt requested, to the individual's last  
33       known address of the intended action.

34       (a) The clerk of the county where the warrant is filed shall  
35       immediately designate a superior court cause number for the warrant.  
36       The clerk shall cause to be entered in the judgment docket under the  
37       superior court cause number assigned to the warrant the name of the  
38       person or persons mentioned in the warrant, the amount of the  
39       overpayment assessment, and the date when the warrant was filed.

1       (b) The amount of the warrant as docketed shall become a lien  
2 upon the title to, and any interest in, all real and personal  
3 property of the person or persons against whom the warrant is issued,  
4 the same as a judgment in a civil case duly docketed in the office of  
5 the clerk. A warrant so docketed shall be sufficient to support the  
6 issuance of writs of execution and writs of garnishment in favor of  
7 the state in the manner provided by law for a civil judgment.

8       (c) A copy of the warrant shall be mailed to the person or  
9 persons mentioned in the warrant by certified mail to the person's  
10 last known address within ten days of its filing with the clerk.

11       **Sec. 11.** RCW 49.86.090 and 2007 c 357 s 11 are each amended to  
12 read as follows:

13       (1) During a period in which an individual receives family and  
14 medical leave insurance benefits or earns waiting period credits  
15 under this chapter, the individual is entitled to family and medical  
16 leave and, at the established ending date of leave, to be restored to  
17 a position of employment with the employer from whom leave was taken.

18       (2) The individual entitled to leave under this section shall be  
19 restored to a position of employment in the same manner as an  
20 employee entitled to leave under chapter 49.78 RCW is restored to a  
21 position of employment, as specified in RCW 49.78.280.

22       (3) This section applies only to an individual if:

23       (a) The employer from whom the individual takes family and  
24 medical leave employs ~~((more than))~~ twenty-five or more employees for  
25 each working day during each of twenty or more calendar workweeks in  
26 the current or preceding calendar year within seventy-five miles of  
27 the employee's worksite; and

28       (b) The individual has been employed for at least ~~((twelve))~~ six  
29 months by that employer, and for at least ~~((one thousand two))~~ six  
30 hundred fifty hours of service with that employer during the previous  
31 ~~((twelve))~~ six-month period.

32       (4) This section shall be enforced by the department of labor and  
33 industries as provided in chapter 49.78 RCW.

34       **Sec. 12.** RCW 49.86.100 and 2007 c 357 s 12 are each amended to  
35 read as follows:

36       If spouses ~~((or people involved in a legal relationship~~  
37 ~~established under chapter 26.60 RCW who))~~ are entitled to leave under  
38 this chapter and are employed by the same employer, the employer may

1 require that spouses (~~or people involved in such a relationship~~  
2 ~~governed by Title 26 RCW~~) not take such leave concurrently if such  
3 leave is taken: (1) For the birth or placement of a child; or (2) for  
4 a parent's serious health condition.

5 NEW SECTION. Sec. 13. A new section is added to chapter 49.86  
6 RCW to read as follows:

7 If an individual does not have a spouse, the individual may  
8 designate one person for whom the employee will care if the  
9 designated person has a serious health condition. An employer may  
10 establish a process for an individual to make such a designation  
11 within thirty days of the individual's date of hire. Thereafter, the  
12 employer must permit the individual to make or change such a  
13 designation, as applicable, on an annual basis. If an individual's  
14 employer establishes such a process, the individual must make such a  
15 designation using the employer's process. If an individual's employer  
16 does not establish such a process, the individual may make such a  
17 designation when filing a claim for benefits.

18 **Sec. 14.** RCW 49.86.110 and 2007 c 357 s 13 are each amended to  
19 read as follows:

20 (1) Beginning January 1, 2017, an employer of individuals not  
21 covered by this chapter or a self-employed person, including a sole  
22 proprietor, partner, or joint venturer, may elect coverage under this  
23 chapter for all individuals in its employ for an initial period of  
24 not less than three years or a subsequent period of not less than one  
25 year immediately following another period of coverage. The employer  
26 or self-employed person must file a notice of election in writing  
27 with the (~~director~~) commissioner, as required by the department.  
28 The election becomes effective on the date of filing the notice with  
29 the commissioner.

30 (2) An employer or self-employed person who has elected coverage  
31 may withdraw from coverage within thirty days after the end of the  
32 three-year period of coverage, or at such other times as the  
33 (~~director~~) commissioner may (~~prescribe~~) adopt by rule, by filing  
34 (~~written~~) a notice of withdrawal in writing with the (~~director~~)  
35 commissioner, such withdrawal to take effect not sooner than thirty  
36 days after filing the notice with the commissioner. Within five days  
37 of filing written notice of the withdrawal with the (~~director~~)

1 commissioner, an employer must provide written notice of the  
2 withdrawal to all individuals in the employer's employ.

3 (3) The department may cancel elective coverage if the employer  
4 or self-employed person fails to make required payments or reports.  
5 The department may collect due and unpaid premiums and may levy an  
6 additional premium for the remainder of the period of coverage. The  
7 cancellation shall be effective no later than thirty days from the  
8 date of the notice in writing advising the employer or self-employed  
9 person of the cancellation. Within five days of receiving written  
10 notice of the cancellation from the commissioner, an employer must  
11 provide written notice of the cancellation to all individuals in the  
12 employer's employ.

13 (4) In developing and implementing the requirements of this  
14 section, the department shall adopt government efficiencies to  
15 improve administration and reduce costs. These efficiencies may  
16 include, but are not limited to, requiring that payments be made in a  
17 manner and at intervals unique to the elective coverage program.

18 NEW SECTION. Sec. 15. A new section is added to chapter 49.86  
19 RCW to read as follows:

20 (1) Beginning July 1, 2016, for each individual, each employer  
21 shall pay a premium to the department based on the amount of the  
22 employee's wages. Each employer may deduct from the pay of each  
23 individual one-half of the full amount that the employer is required  
24 to pay for the individual.

25 (2)(a) Beginning July 1, 2016, and ending December 31, 2015, each  
26 employer shall pay a premium to the department of two-tenths of one  
27 percent of the employee's wages.

28 (b) Beginning January 1, 2018, and ending December 31, 2018, each  
29 employer shall pay a premium to the department of four-tenths of one  
30 percent of the employee's wages.

31 (c) By September 1, 2018, and by each subsequent September 1st,  
32 the commissioner shall adjust the amount of the premium to ensure  
33 that the amount is the lowest rate necessary to pay family and  
34 medical leave insurance benefits and administrative costs on a  
35 current basis, and maintain actuarial solvency in accordance with  
36 recognized insurance principles. The adjusted amount of the premium  
37 takes effect for the calendar year beginning after the relevant  
38 September 1st.

1 (3) Payments shall be made in the manner and at such intervals as  
2 provided in this chapter and directed by the department, and shall be  
3 deposited in the family and medical leave insurance account. In  
4 developing and implementing the requirements of this section and  
5 section 16 of this act, the department shall adopt government  
6 efficiencies to improve administration and reduce costs. These  
7 efficiencies shall include combined reporting and payment, with a  
8 single return, of premiums under this section and contributions under  
9 chapter 50.24 RCW. In the payment of premiums, a fractional part of a  
10 cent shall be disregarded unless it amounts to one-half cent or more,  
11 in which case it shall be increased to one cent.

12 NEW SECTION. **Sec. 16.** A new section is added to chapter 49.86  
13 RCW to read as follows:

14 (1) In the form and at the times specified in this chapter and by  
15 the commissioner, an employer shall make reports, furnish  
16 information, and make payments of premiums as required by section 15  
17 of this act to the department. In developing and implementing the  
18 requirements of this section and section 15 of this act, the  
19 department shall adopt government efficiencies to improve  
20 administration and reduce costs. These efficiencies shall include  
21 combined reporting and payment, with a single return, of premiums  
22 under this section and contributions under chapter 50.24 RCW. If the  
23 employer is a temporary help company that provides employees on a  
24 temporary basis to its customers, the temporary help company is  
25 considered the employer for purposes of this section. However, if the  
26 temporary help company fails to remit the required premiums, the  
27 customer to whom the employees were provided is liable for paying the  
28 premiums.

29 (2)(a) An employer must keep at his or her place of business a  
30 record of employment from which the information needed by the  
31 department for purposes of this chapter may be obtained. This record  
32 shall at all times be open to the inspection of the commissioner or  
33 department employees designated by the commissioner.

34 (b) Information obtained from employer records under this chapter  
35 is confidential and not open to public inspection, other than to  
36 public employees in the performance of their official duties.  
37 However, an interested party shall be supplied with information from  
38 employer records to the extent necessary for the proper presentation

1 of the case in question. An employer may authorize inspection of its  
2 records by written consent.

3 (3) The requirements relating to the assessment and collection of  
4 family and medical leave insurance premiums are the same as the  
5 requirements relating to the assessment and collection of  
6 contributions under Title 50 RCW, including but not limited to  
7 penalties, interest, and department lien rights and collection  
8 remedies. These requirements apply to:

9 (a) An employer that fails under this chapter to make the  
10 required reports, or fails to remit the full amount of the premiums  
11 when due;

12 (b) An employer that willfully makes a false statement or  
13 misrepresentation regarding a material fact, or willfully fails to  
14 report a material fact, to avoid making the required reports or  
15 remitting the full amount of the premiums when due under this  
16 chapter;

17 (c) A successor in the manner specified in RCW 50.24.210; and

18 (d) An officer, member, or owner having control or supervision of  
19 payment and/or reporting of family and medical leave insurance, or  
20 who is charged with the responsibility for the filing of returns, in  
21 the manner specified in RCW 50.24.230.

22 (4) Notwithstanding subsection (3) of this section, appeals are  
23 governed by RCW 49.86.120.

24 **Sec. 17.** RCW 49.86.120 and 2007 c 357 s 14 are each amended to  
25 read as follows:

26 (1) Except as provided in section 18(1) of this act, a person  
27 ((aggrieved by a decision of the department under this chapter must))  
28 may file a notice of appeal ((with the director)) from any  
29 determination or redetermination made by the department with the  
30 commissioner, by mail or personally, within thirty days after the  
31 date on which a copy of the department's decision was ((communicated  
32 to)) served on the person. Upon receipt of the notice of appeal, the  
33 ((director)) commissioner shall request the assignment of an  
34 administrative law judge in accordance with chapter 34.05 RCW to  
35 conduct a hearing and issue a proposed decision and order. The  
36 hearing shall be conducted in accordance with chapter 34.05 RCW.

37 (2) The administrative law judge's proposed decision and order  
38 shall be final and not subject to further appeal unless, within  
39 thirty days after the decision is ((communicated to)) served on the

1 interested parties, (~~a party petitions for review by the director.~~  
2 ~~If the director's review is timely requested, the director may order~~  
3 ~~additional evidence by the administrative law judge. On the basis of~~  
4 ~~the evidence before the administrative law judge and such additional~~  
5 ~~evidence as the director may order to be taken, the director shall~~  
6 ~~render a decision affirming, modifying, or setting aside the~~  
7 ~~administrative law judge's decision. The director's decision becomes~~  
8 ~~final and not subject to further appeal unless, within thirty days~~  
9 ~~after the decision is communicated to the interested parties,)~~) a  
10 party files a petition for judicial review as provided in chapter  
11 34.05 RCW. (~~The director is a party to any judicial action involving~~  
12 ~~the director's decision and shall be represented in the action by the~~  
13 ~~attorney general.~~)

14 (3) If, upon (~~administrative or~~) judicial review, the final  
15 decision of the applicable department is reversed or modified, (~~the~~  
16 ~~administrative law judge or~~) the court in its discretion may award  
17 the prevailing party, other than the department, reasonable  
18 attorneys' fees and costs (~~to the prevailing party~~). Attorneys'  
19 fees and costs owed by the department, if any, are payable from the  
20 family and medical leave insurance account.

21 NEW SECTION. Sec. 18. A new section is added to chapter 49.86  
22 RCW to read as follows:

23 (1) A determination of amount of benefits potentially payable  
24 issued under this chapter shall not serve as a basis for appeal under  
25 RCW 49.86.120. However, the determination shall be subject to request  
26 by the individual on family and medical leave for redetermination by  
27 the commissioner at any time within one year from the date of  
28 delivery or mailing of such determination, or any redetermination  
29 thereof. A redetermination shall be furnished to the individual in  
30 writing and provide the basis for appeal under RCW 49.86.120.

31 (2) A determination of denial of benefits shall become final, in  
32 the absence of timely appeal therefrom. The commissioner may  
33 redetermine such determinations at any time within one year from  
34 delivery or mailing to correct an error in identity, omission of  
35 fact, or misapplication of law with respect to the facts.

36 (3) A determination of allowance of benefits shall become final,  
37 in the absence of a timely appeal therefrom. The commissioner may  
38 redetermine such allowance at any time within two years following the

1 application year in which such allowance was made in order to recover  
2 any benefits for which recovery is provided under RCW 49.86.080.

3 (4) A redetermination may be made at any time: (a) To conform to  
4 a final court decision applicable to either an initial determination  
5 or a determination of denial or allowance of benefits; (b) in the  
6 event of a back pay award or settlement affecting the allowance of  
7 benefits; or (c) in the case of misrepresentation or willful failure  
8 to report a material fact. Written notice of any such redetermination  
9 shall be promptly given by mail or delivered to such interested  
10 parties as were notified of the initial determination or  
11 determination of denial or allowance of benefits and any new  
12 interested party or parties who, pursuant to such rule as the  
13 commissioner may adopt, would be an interested party.

14 **Sec. 19.** RCW 49.86.130 and 2007 c 357 s 15 are each amended to  
15 read as follows:

16 (1) An employer, temporary help company, employment agency,  
17 employee organization, or other person may not discharge, expel, or  
18 otherwise discriminate against ((a person)) an individual because he  
19 or she has filed or communicated to the employer an intent to file a  
20 claim, a complaint, or an appeal, or has testified or is about to  
21 testify or has assisted in any proceeding, under this chapter, at any  
22 time, including during the waiting period described in RCW 49.86.050  
23 and the period in which the ((person)) individual receives family and  
24 medical leave insurance benefits under this chapter. ((This section  
25 shall be enforced as provided in RCW 51.48.025.))

26 (2) Any individual who believes that he or she has been  
27 discharged or otherwise discriminated against by an employer in  
28 violation of this section may file a complaint with the commissioner  
29 alleging discrimination within ninety days of the date of the alleged  
30 violation. Upon receipt of such complaint, the commissioner shall  
31 cause an investigation to be made as the commissioner deems  
32 appropriate. Within ninety days of the receipt of a complaint filed  
33 under this section, the commissioner shall notify the complainant of  
34 his or her determination. If, upon such investigation, it is  
35 determined that this section has been violated, the commissioner  
36 shall bring an action in the superior court of the county in which  
37 the violation is alleged to have occurred.

1 (3) If the commissioner determines that this section has not been  
2 violated, the individual may institute the action on his or her own  
3 behalf.

4 (4) In any action brought under this section, the superior court  
5 shall have jurisdiction, for cause shown, to restrain violations of  
6 subsection (1) of this section and to order all appropriate relief  
7 including rehiring or reinstatement of the individual with back pay.

8 **Sec. 20.** RCW 49.86.140 and 2007 c 357 s 16 are each amended to  
9 read as follows:

10 ~~(1)((a) Leave taken under this chapter must be taken~~  
11 ~~concurrently with any leave taken))~~ If an individual is entitled to  
12 employment protection under this chapter and under the federal family  
13 and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107  
14 Stat. 6) (~~or under~~), chapter 49.78 RCW, or other applicable  
15 federal, state, or local law, the individual is entitled to  
16 employment protection under the other applicable law most favorable  
17 to the individual.

18 ~~((b) An))~~ (2) Except as provided in this subsection, if an  
19 individual is entitled to family and medical leave under this chapter  
20 and under the federal family and medical leave act, chapter 49.78  
21 RCW, or other applicable federal, state, or local law, the employer  
22 may require that leave (~~taken~~) under this chapter be taken  
23 concurrently (~~or otherwise coordinated~~) with leave (~~allowed~~)  
24 under (~~the terms of a collective bargaining agreement or employer~~  
25 policy, as applicable, for the birth or placement of a child)) other  
26 applicable laws. The employer must give individuals in its employ  
27 written notice of this requirement. Leave from employment under this  
28 chapter is in addition to leave from employment during which benefits  
29 are paid or are payable under Title 51 RCW or other applicable  
30 federal or state industrial insurance laws.

31 (3) In any week in which an individual is earning waiting period  
32 credits or receiving benefits under chapter 7.68 RCW, Title 50 or 51  
33 RCW, or other applicable federal or state crime victims'  
34 compensation, unemployment compensation, industrial insurance, or  
35 disability insurance laws, the individual is disqualified from  
36 receiving family and medical leave insurance benefits under this  
37 chapter.

38 (4)(a) Except as provided in this section, this chapter does not  
39 prohibit an employer from negotiating a collective bargaining

1 agreement or adopting employer policies, as applicable, to coordinate  
2 existing benefits with leave from employment and wage replacement  
3 benefits required under this chapter.

4 ~~((2)(a))~~ (b) This chapter does not diminish an employer's  
5 obligation to comply with a collective bargaining agreement or  
6 employer policy, as applicable, that provides greater ~~((leave for the~~  
7 ~~birth or placement of a child))~~ employment protection, leave from  
8 employment, or wage replacement benefits than under this chapter.

9 ~~((b))~~ (c) An individual's ~~((right to leave))~~ rights to  
10 employment protection, leave from employment, and wage replacement  
11 benefits under this chapter may not be diminished by a collective  
12 bargaining agreement entered into or renewed or an employer policy  
13 adopted or retained after ~~((July 1, 2008))~~ the effective date of this  
14 section. Any agreement by an individual to waive his or her rights  
15 under this chapter is void as against public policy.

16 (d) If an employer provides wage replacement benefits to an  
17 individual while on family and medical leave through disability  
18 insurance or any other means, the individual may elect whether first  
19 to receive such benefits or receive family and medical leave  
20 insurance benefits under this chapter. An individual may not be  
21 required to receive the individual's wage replacement benefits, if  
22 any, before receiving family and medical leave insurance benefits  
23 under this chapter.

24 **Sec. 21.** RCW 49.86.160 and 2007 c 357 s 18 are each amended to  
25 read as follows:

26 The ~~((director))~~ commissioner may adopt rules as necessary to  
27 implement this chapter. In adopting rules, the ~~((director))~~  
28 commissioner shall maintain consistency with the rules adopted to  
29 implement the federal family and medical leave act, and chapter 49.78  
30 RCW, to the extent such rules are not in conflict with this chapter.  
31 The provisions of RCW 34.05.328 do not apply to rules adopted by the  
32 commissioner to implement RCW 49.86.060(1) or section 15(3) of this  
33 act.

34 **Sec. 22.** RCW 49.86.170 and 2009 c 4 s 905 are each amended to  
35 read as follows:

36 The family and medical leave insurance account is created in the  
37 custody of the state treasurer. All receipts from the premiums  
38 imposed under this chapter must be deposited in the account.

1 Expenditures from the account may be used only for the purposes of  
2 the family and medical leave insurance program. Only the (~~director~~  
3 ~~of the department of labor and industries~~) commissioner or the  
4 (~~director's~~) commissioner's designee may authorize expenditures  
5 from the account. The account is subject to the allotment procedures  
6 under chapter 43.88 RCW. An appropriation is required for  
7 administrative expenses, but not for benefit payments. (~~During the~~  
8 ~~2007-2009 fiscal biennium, the legislature may transfer from the~~  
9 ~~family leave insurance account to the state general fund such amounts~~  
10 ~~as reflect the excess fund balance of the account.~~)

11 **Sec. 23.** RCW 49.86.180 and 2007 c 357 s 20 are each amended to  
12 read as follows:

13 Whenever, in the judgment of the state investment board, there  
14 shall be in the family and medical leave insurance account funds in  
15 excess of that amount deemed by the state investment board to be  
16 sufficient to meet the current expenditures properly payable  
17 therefrom, the state investment board shall have full power to  
18 invest, reinvest, manage, contract, or sell or exchange investments  
19 acquired with such excess funds in the manner prescribed by RCW  
20 43.84.150, and not otherwise.

21 **Sec. 24.** RCW 43.79A.040 and 2013 c 251 s 5 and 2013 c 88 s 1 are  
22 each reenacted and amended to read as follows:

23 (1) Money in the treasurer's trust fund may be deposited,  
24 invested, and reinvested by the state treasurer in accordance with  
25 RCW 43.84.080 in the same manner and to the same extent as if the  
26 money were in the state treasury, and may be commingled with moneys  
27 in the state treasury for cash management and cash balance purposes.

28 (2) All income received from investment of the treasurer's trust  
29 fund must be set aside in an account in the treasury trust fund to be  
30 known as the investment income account.

31 (3) The investment income account may be utilized for the payment  
32 of purchased banking services on behalf of treasurer's trust funds  
33 including, but not limited to, depository, safekeeping, and  
34 disbursement functions for the state treasurer or affected state  
35 agencies. The investment income account is subject in all respects to  
36 chapter 43.88 RCW, but no appropriation is required for payments to  
37 financial institutions. Payments must occur prior to distribution of  
38 earnings set forth in subsection (4) of this section.

1 (4)(a) Monthly, the state treasurer must distribute the earnings  
2 credited to the investment income account to the state general fund  
3 except under (b), (c), and (d) of this subsection.

4 (b) The following accounts and funds must receive their  
5 proportionate share of earnings based upon each account's or fund's  
6 average daily balance for the period: The Washington promise  
7 scholarship account, the Washington advanced college tuition payment  
8 program account, the accessible communities account, the community  
9 and technical college innovation account, the agricultural local  
10 fund, the American Indian scholarship endowment fund, the foster care  
11 scholarship endowment fund, the foster care endowed scholarship trust  
12 fund, the contract harvesting revolving account, the Washington state  
13 combined fund drive account, the commemorative works account, the  
14 county enhanced 911 excise tax account, the toll collection account,  
15 the developmental disabilities endowment trust fund, the energy  
16 account, the fair fund, the family and medical leave insurance  
17 account, the food animal veterinarian conditional scholarship  
18 account, the fruit and vegetable inspection account, the future  
19 teachers conditional scholarship account, the game farm alternative  
20 account, the GET ready for math and science scholarship account, the  
21 Washington global health technologies and product development  
22 account, the grain inspection revolving fund, the industrial  
23 insurance rainy day fund, the juvenile accountability incentive  
24 account, the law enforcement officers' and firefighters' plan 2  
25 expense fund, the local tourism promotion account, the multiagency  
26 permitting team account, the pilotage account, the produce railcar  
27 pool account, the regional transportation investment district  
28 account, the rural rehabilitation account, the stadium and exhibition  
29 center account, the youth athletic facility account, the self-  
30 insurance revolving fund, the children's trust fund, the Washington  
31 horse racing commission Washington bred owners' bonus fund and  
32 breeder awards account, the Washington horse racing commission class  
33 C purse fund account, the individual development account program  
34 account, the Washington horse racing commission operating account,  
35 the life sciences discovery fund, the Washington state heritage  
36 center account, the reduced cigarette ignition propensity account,  
37 the center for childhood deafness and hearing loss account, the  
38 school for the blind account, the Millersylvania park trust fund, the  
39 public employees' and retirees' insurance reserve fund, and the  
40 radiation perpetual maintenance fund.

1 (c) The following accounts and funds must receive eighty percent  
2 of their proportionate share of earnings based upon each account's or  
3 fund's average daily balance for the period: The advanced right-of-  
4 way revolving fund, the advanced environmental mitigation revolving  
5 account, the federal narcotics asset forfeitures account, the high  
6 occupancy vehicle account, the local rail service assistance account,  
7 and the miscellaneous transportation programs account.

8 (d) Any state agency that has independent authority over accounts  
9 or funds not statutorily required to be held in the custody of the  
10 state treasurer that deposits funds into a fund or account in the  
11 custody of the state treasurer pursuant to an agreement with the  
12 office of the state treasurer shall receive its proportionate share  
13 of earnings based upon each account's or fund's average daily balance  
14 for the period.

15 (5) In conformance with Article II, section 37 of the state  
16 Constitution, no trust accounts or funds shall be allocated earnings  
17 without the specific affirmative directive of this section.

18 **Sec. 25.** RCW 49.86.210 and 2013 2nd sp.s. c 26 s 2 are each  
19 amended to read as follows:

20 Beginning (~~(one year after the implementation date specified by~~  
21 ~~the legislature pursuant to RCW 49.86.030)) December 1, 2018, and  
22 annually thereafter, the department shall report to the legislature  
23 on projected and actual program participation, premium rates, fund  
24 balances, and outreach efforts.~~

25 **Sec. 26.** RCW 50.29.021 and 2013 c 244 s 1 and 2013 c 189 s 3 are  
26 each reenacted and amended to read as follows:

27 (1) This section applies to benefits charged to the experience  
28 rating accounts of employers for claims that have an effective date  
29 on or after January 4, 2004.

30 (2)(a) An experience rating account shall be established and  
31 maintained for each employer, except employers as described in RCW  
32 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make  
33 payments in lieu of contributions, taxable local government employers  
34 as described in RCW 50.44.035, and those employers who are required  
35 to make payments in lieu of contributions, based on existing records  
36 of the employment security department.

37 (b) Benefits paid to an eligible individual shall be charged to  
38 the experience rating accounts of each of such individual's employers

1 during the individual's base year in the same ratio that the wages  
2 paid by each employer to the individual during the base year bear to  
3 the wages paid by all employers to that individual during that base  
4 year, except as otherwise provided in this section.

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

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

13 (ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through  
14 (x).

15 (3) The legislature finds that certain benefit payments, in whole  
16 or in part, should not be charged to the experience rating accounts  
17 of employers except those employers described in RCW 50.44.010,  
18 50.44.030, and 50.50.030 who have properly elected to make payments  
19 in lieu of contributions, taxable local government employers  
20 described in RCW 50.44.035, and those employers who are required to  
21 make payments in lieu of contributions, as follows:

22 (a) Benefits paid to any individual later determined to be  
23 ineligible shall not be charged to the experience rating account of  
24 any contribution paying employer, except as provided in subsection  
25 (5) of this section.

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

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

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

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

37 (d) In the case of individuals who requalify for benefits under  
38 RCW 50.20.050 or 50.20.060, benefits based on wage credits earned  
39 prior to the disqualifying separation shall not be charged to the

1 experience rating account of the contribution paying employer from  
2 whom that separation took place.

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

7 (f) With respect to claims with an effective date on or after the  
8 first Sunday following April 22, 2005, benefits paid that exceed the  
9 benefits that would have been paid if the weekly benefit amount for  
10 the claim had been determined as one percent of the total wages paid  
11 in the individual's base year shall not be charged to the experience  
12 rating account of any contribution paying employer. This subsection  
13 (3)(f) does not apply to the calculation of contribution rates under  
14 RCW 50.29.025 for rate year 2010 and thereafter.

15 (g) The forty-five dollar increase paid as part of an  
16 individual's weekly benefit amount as provided in RCW 50.20.1201 and  
17 the twenty-five dollar increase paid as part of an individual's  
18 weekly benefit amount as provided in RCW 50.20.1202 shall not be  
19 charged to the experience rating account of any contribution paying  
20 employer.

21 (h) With respect to claims where the minimum amount payable  
22 weekly is increased to one hundred fifty-five dollars pursuant to RCW  
23 50.20.1201(3), benefits paid that exceed the benefits that would have  
24 been paid if the minimum amount payable weekly had been calculated  
25 pursuant to RCW 50.20.120 shall not be charged to the experience  
26 rating account of any contribution paying employer.

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

32 (j) Training benefits paid to an individual under RCW 50.22.155  
33 shall not be charged to the experience rating account of any  
34 contribution paying employer.

35 (4)(a) A contribution paying base year employer, except employers  
36 as provided in subsection (6) of this section, not otherwise eligible  
37 for relief of charges for benefits under this section, may receive  
38 such relief if the benefit charges result from payment to an  
39 individual who:

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

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

6 (iii) Is unemployed as a result of closure or severe curtailment  
7 of operation at the employer's plant, building, worksite, or other  
8 facility. This closure must be for reasons directly attributable to a  
9 catastrophic occurrence such as fire, flood, or other natural  
10 disaster;

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

18 (v) Continues to be employed on a regularly scheduled permanent  
19 part-time basis by a base year employer and who qualified for two  
20 consecutive unemployment claims where wages were attributable to at  
21 least one employer who employed the individual in both base years.  
22 Benefit charge relief ceases when the employment relationship between  
23 the employer requesting relief and the claimant is terminated. This  
24 subsection does not apply to shared work employers under chapter  
25 50.60 RCW; ((~~or~~))

26 (vi) Was hired to replace an employee who is a member of the  
27 military reserves or National Guard and was called to federal active  
28 military service by the president of the United States and is  
29 subsequently laid off when that employee is reemployed by their  
30 employer upon release from active duty within the time provided for  
31 reemployment in RCW 73.16.035; or

32 (vii) Worked for an employer for fifteen weeks or less, and was  
33 laid off at the end of temporary employment when that individual  
34 temporarily replaced a permanent employee receiving family and  
35 medical leave insurance benefits under chapter 49.86 RCW, and the  
36 layoff is due to the return of that permanent employee. This  
37 subsection applies to claims with an effective date on or after July  
38 5, 2017.

39 (b) The employer requesting relief of charges under this  
40 subsection must request relief in writing within thirty days

1 following mailing to the last known address of the notification of  
2 the valid initial determination of such claim, stating the date and  
3 reason for the separation or the circumstances of continued  
4 employment. The commissioner, upon investigation of the request,  
5 shall determine whether relief should be granted.

6 (5) When a benefit claim becomes invalid due to an amendment or  
7 adjustment of a report where the employer failed to report or  
8 inaccurately reported hours worked or remuneration paid, or both, all  
9 benefits paid will be charged to the experience rating account of the  
10 contribution paying employer or employers that originally filed the  
11 incomplete or inaccurate report or reports. An employer who  
12 reimburses the trust fund for benefits paid to workers and who fails  
13 to report or inaccurately reported hours worked or remuneration paid,  
14 or both, shall reimburse the trust fund for all benefits paid that  
15 are based on the originally filed incomplete or inaccurate report or  
16 reports.

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

27 (a) For the purposes of this subsection, "adequately" means  
28 providing accurate information of sufficient quantity and quality  
29 that would allow a reasonable person to determine eligibility for  
30 benefits.

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

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

38 (B) Twenty percent of the total current claims against the  
39 employer.

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

4 NEW SECTION. **Sec. 27.** A new section is added to chapter 82.04  
5 RCW to read as follows:

6 In computing the tax imposed under this chapter, a credit is  
7 allowed for an employer with fewer than fifty employees for each  
8 working day during each of twenty or more calendar workweeks in the  
9 current or preceding calendar year within seventy-five miles of the  
10 employee's worksite. The credit is allowed during the first twenty-  
11 four months following the hire date of the employer's first employee.  
12 The credit is equal to the full amount of premium paid to the  
13 department for an individual, less any amount deducted from the pay  
14 of the individual. The credit may not exceed the tax otherwise due  
15 under this chapter for the tax reporting period. Unused credit may  
16 not be carried over to be credited against taxes incurred in  
17 subsequent tax reporting periods. The total amount of all credits  
18 allowed under this section for an employer may not exceed one  
19 thousand dollars. No refunds may be granted for credits under this  
20 section.

21 **Sec. 28.** RCW 34.05.328 and 2011 c 298 s 21 and 2011 c 149 s 1  
22 are each reenacted and amended to read as follows:

23 (1) Before adopting a rule described in subsection (5) of this  
24 section, an agency must:

25 (a) Clearly state in detail the general goals and specific  
26 objectives of the statute that the rule implements;

27 (b) Determine that the rule is needed to achieve the general  
28 goals and specific objectives stated under (a) of this subsection,  
29 and analyze alternatives to rule making and the consequences of not  
30 adopting the rule;

31 (c) Provide notification in the notice of proposed rule making  
32 under RCW 34.05.320 that a preliminary cost-benefit analysis is  
33 available. The preliminary cost-benefit analysis must fulfill the  
34 requirements of the cost-benefit analysis under (d) of this  
35 subsection. If the agency files a supplemental notice under RCW  
36 34.05.340, the supplemental notice must include notification that a  
37 revised preliminary cost-benefit analysis is available. A final cost-

1 benefit analysis must be available when the rule is adopted under RCW  
2 34.05.360;

3 (d) Determine that the probable benefits of the rule are greater  
4 than its probable costs, taking into account both the qualitative and  
5 quantitative benefits and costs and the specific directives of the  
6 statute being implemented;

7 (e) Determine, after considering alternative versions of the rule  
8 and the analysis required under (b), (c), and (d) of this subsection,  
9 that the rule being adopted is the least burdensome alternative for  
10 those required to comply with it that will achieve the general goals  
11 and specific objectives stated under (a) of this subsection;

12 (f) Determine that the rule does not require those to whom it  
13 applies to take an action that violates requirements of another  
14 federal or state law;

15 (g) Determine that the rule does not impose more stringent  
16 performance requirements on private entities than on public entities  
17 unless required to do so by federal or state law;

18 (h) Determine if the rule differs from any federal regulation or  
19 statute applicable to the same activity or subject matter and, if so,  
20 determine that the difference is justified by the following:

21 (i) A state statute that explicitly allows the agency to differ  
22 from federal standards; or

23 (ii) Substantial evidence that the difference is necessary to  
24 achieve the general goals and specific objectives stated under (a) of  
25 this subsection; and

26 (i) Coordinate the rule, to the maximum extent practicable, with  
27 other federal, state, and local laws applicable to the same activity  
28 or subject matter.

29 (2) In making its determinations pursuant to subsection (1)(b)  
30 through (h) of this section, the agency must place in the rule-making  
31 file documentation of sufficient quantity and quality so as to  
32 persuade a reasonable person that the determinations are justified.

33 (3) Before adopting rules described in subsection (5) of this  
34 section, an agency must place in the rule-making file a rule  
35 implementation plan for rules filed under each adopting order. The  
36 plan must describe how the agency intends to:

37 (a) Implement and enforce the rule, including a description of  
38 the resources the agency intends to use;

39 (b) Inform and educate affected persons about the rule;

40 (c) Promote and assist voluntary compliance; and

1 (d) Evaluate whether the rule achieves the purpose for which it  
2 was adopted, including, to the maximum extent practicable, the use of  
3 interim milestones to assess progress and the use of objectively  
4 measurable outcomes.

5 (4) After adopting a rule described in subsection (5) of this  
6 section regulating the same activity or subject matter as another  
7 provision of federal or state law, an agency must do all of the  
8 following:

9 (a) Coordinate implementation and enforcement of the rule with  
10 the other federal and state entities regulating the same activity or  
11 subject matter by making every effort to do one or more of the  
12 following:

- 13 (i) Deferring to the other entity;
- 14 (ii) Designating a lead agency; or
- 15 (iii) Entering into an agreement with the other entities  
16 specifying how the agency and entities will coordinate implementation  
17 and enforcement.

18 If the agency is unable to comply with this subsection (4)(a),  
19 the agency must report to the legislature pursuant to (b) of this  
20 subsection;

21 (b) Report to the joint administrative rules review committee:

- 22 (i) The existence of any overlap or duplication of other federal  
23 or state laws, any differences from federal law, and any known  
24 overlap, duplication, or conflict with local laws; and
- 25 (ii) Make recommendations for any legislation that may be  
26 necessary to eliminate or mitigate any adverse effects of such  
27 overlap, duplication, or difference.

28 (5)(a) Except as provided in (b) of this subsection, this section  
29 applies to:

30 (i) Significant legislative rules of the departments of ecology,  
31 labor and industries, health, revenue, social and health services,  
32 and natural resources, the employment security department, the forest  
33 practices board, the office of the insurance commissioner, and to the  
34 legislative rules of the department of fish and wildlife implementing  
35 chapter 77.55 RCW; and

36 (ii) Any rule of any agency, if this section is voluntarily made  
37 applicable to the rule by the agency, or is made applicable to the  
38 rule by a majority vote of the joint administrative rules review  
39 committee within forty-five days of receiving the notice of proposed  
40 rule making under RCW 34.05.320.

1 (b) This section does not apply to:

2 (i) Emergency rules adopted under RCW 34.05.350;

3 (ii) Rules relating only to internal governmental operations that  
4 are not subject to violation by a nongovernment party;

5 (iii) Rules adopting or incorporating by reference without  
6 material change federal statutes or regulations, Washington state  
7 statutes, rules of other Washington state agencies, shoreline master  
8 programs other than those programs governing shorelines of statewide  
9 significance, or, as referenced by Washington state law, national  
10 consensus codes that generally establish industry standards, if the  
11 material adopted or incorporated regulates the same subject matter  
12 and conduct as the adopting or incorporating rule;

13 (iv) Rules that only correct typographical errors, make address  
14 or name changes, or clarify language of a rule without changing its  
15 effect;

16 (v) Rules the content of which is explicitly and specifically  
17 dictated by statute;

18 (vi) Rules that set or adjust fees under the authority of RCW  
19 19.02.075 or that set or adjust fees or rates pursuant to legislative  
20 standards, including fees set or adjusted under the authority of RCW  
21 19.80.045;

22 (vii) Rules of the department of social and health services  
23 relating only to client medical or financial eligibility and rules  
24 concerning liability for care of dependents; ((~~or~~))

25 (viii) Rules of the department of revenue that adopt a uniform  
26 expiration date for reseller permits as authorized in RCW 82.32.780  
27 and 82.32.783; or

28 (ix) Rules of the employment security department to implement RCW  
29 49.86.060(1) or section 15(3) of this act.

30 (c) For purposes of this subsection:

31 (i) A "procedural rule" is a rule that adopts, amends, or repeals  
32 (A) any procedure, practice, or requirement relating to any agency  
33 hearings; (B) any filing or related process requirement for making  
34 application to an agency for a license or permit; or (C) any policy  
35 statement pertaining to the consistent internal operations of an  
36 agency.

37 (ii) An "interpretive rule" is a rule, the violation of which  
38 does not subject a person to a penalty or sanction, that sets forth  
39 the agency's interpretation of statutory provisions it administers.

1 (iii) A "significant legislative rule" is a rule other than a  
2 procedural or interpretive rule that (A) adopts substantive  
3 provisions of law pursuant to delegated legislative authority, the  
4 violation of which subjects a violator of such rule to a penalty or  
5 sanction; (B) establishes, alters, or revokes any qualification or  
6 standard for the issuance, suspension, or revocation of a license or  
7 permit; or (C) adopts a new, or makes significant amendments to, a  
8 policy or regulatory program.

9 (d) In the notice of proposed rule making under RCW 34.05.320, an  
10 agency must state whether this section applies to the proposed rule  
11 pursuant to (a)(i) of this subsection, or if the agency will apply  
12 this section voluntarily.

13 (6) By January 31, 1996, and by January 31st of each even-  
14 numbered year thereafter, the office of regulatory assistance, after  
15 consulting with state agencies, counties, and cities, and business,  
16 labor, and environmental organizations, must report to the governor  
17 and the legislature regarding the effects of this section on the  
18 regulatory system in this state. The report must document:

19 (a) The rules proposed to which this section applied and to the  
20 extent possible, how compliance with this section affected the  
21 substance of the rule, if any, that the agency ultimately adopted;

22 (b) The costs incurred by state agencies in complying with this  
23 section;

24 (c) Any legal action maintained based upon the alleged failure of  
25 any agency to comply with this section, the costs to the state of  
26 such action, and the result;

27 (d) The extent to which this section has adversely affected the  
28 capacity of agencies to fulfill their legislatively prescribed  
29 mission;

30 (e) The extent to which this section has improved the  
31 acceptability of state rules to those regulated; and

32 (f) Any other information considered by the office of financial  
33 management to be useful in evaluating the effect of this section.

34 NEW SECTION. **Sec. 29.** If any provision of this act or its  
35 application to any person or circumstance is held invalid, the  
36 remainder of the act or the application of the provision to other  
37 persons or circumstances is not affected.

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