

Title 50A

FAMILY AND MEDICAL LEAVE

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Chapter 50A.05 RCW GENERAL PROVISIONS

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50A.05.005 Intent. The legislature finds that the demands of the workplace and of families need to be balanced to promote family stability and economic security. The legislature also finds that families across the state own and operate businesses. Workplace leave policies are desirable to accommodate changes in the workforce such as rising numbers of dual-career couples, working single parents, and an aging population. In addition the impact of significant new requirements should be reasonably balanced to help small businesses thrive.

The legislature also finds that access to paid leave is associated with many important health benefits. Research confirms that paid leave results in decreased infant mortality and more well-baby visits and reductions in maternal postpartum depression and stress. The legislature further finds that paid leave increases the duration of breastfeeding, which supports bonding, stimulates positive neurological and psychological development, strengthens a child's immune system, and reduces the risks of serious or costly health problems such as asthma, acute ear infections, obesity, Type 2 diabetes, leukemia, and sudden infant death syndrome. The legislature also finds that when fathers have access to paid leave they are more directly engaged during the child's first

few months, thereby increasing father infant bonding and reducing overall stress on the family.

The legislature declares it to be in the public interest to create a family and medical leave insurance program to provide reasonable paid family leave for the birth or placement of a child with the employee, for the care of a family member who has a serious health condition, and for a qualifying exigency under the federal family and medical leave act, and reasonable paid medical leave for an employee's own serious health condition and to reasonably assist businesses in implementing and maintaining a program to support their employees and family. [2017 3rd sp.s. c 5 § 1. Formerly RCW 50A.04.005.]

50A.05.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

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

- (i) Is performed infrequently and irregularly; and
- (ii) If performed for an employer, does not promote or advance the employer's customary trade or business.

(b) For purposes of casual labor:

- (i) "Infrequently" means work performed twelve or fewer times per calendar quarter; and
- (ii) "Irregularly" means work performed not on a consistent cadence.

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

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

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

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

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

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

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

ernment including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision.

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

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

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

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

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

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

(b) "Employment" does not include:

(i) Self-employed individuals;

(ii) Casual labor;

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

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

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

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

(B) As a separate alternative:

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

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

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

(IV) On the effective date of the contract of service, such individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a

schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

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

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

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

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

(B) The service is either outside the usual course of business for which the service is performed, or the service is performed outside of all the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

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

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

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

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

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

(9) "Employment benefits" means all benefits provided or made available to employees by an employer, including

group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Remuneration does not include:

(i) The payment of tips;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) Any period of absence to receive multiple treatments, including any period of recovery from the treatments, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for: (I) Restorative surgery after an accident or other injury; or (II) a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer, severe arthritis, or kidney disease.

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

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

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

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

(f) Conditions for which cosmetic treatments are administered, such as most treatments for acne or plastic surgery, are not serious health conditions unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraines, routine dental or orthodontia problems, and periodontal disease are examples of conditions that are not serious health conditions and do not qualify for leave under this title. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this section are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

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

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

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

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

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

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

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

(28) "Typical workweek hours" means:

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

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

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

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

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

(c) For the purpose of a self-employed person electing coverage under RCW 50A.10.010, the meaning is defined by rule. [2022 c 233 § 1; 2021 c 232 § 2; 2020 c 125 § 1; 2019 c 13 § 1; 2018 c 141 § 1; 2017 3rd sp.s. c 5 § 2. Formerly RCW 50A.04.010.]

Intent—2021 c 232: "The legislature intends to prevent impacts, based on this act, to the family and medical leave insurance account or the application of a solvency surcharge." [2021 c 232 § 1.]

Expenses for individuals utilizing leave in excess of 500 prior to July 1, 2023, to be paid by the general fund—2021 c 232: "If the number of individuals utilizing leave under Title 50A RCW as a result of the amended definition of family member in this act exceeds 500 individuals in any calendar year before July 1, 2023, the expenses of the additional leave must be paid by the general fund into the family and medical leave insurance account created in RCW 50A.05.070." [2021 c 232 § 4.]

Effective date—2020 c 125 § 1: "Section 1 of 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 25, 2020]." [2020 c 125 § 19.]

50A.05.020 Program administration—Information disclosure—Outreach. (1) The department shall establish and administer the family and medical leave program and pay family and medical leave benefits as specified in this title. The department shall adopt government efficiencies to improve administration and reduce costs. These efficiencies shall include, to the extent feasible, combined reporting and payment, with a single return, of premiums under this title and contributions under chapter 50.24 RCW.

(2) The department shall establish procedures and forms for filing applications for benefits under this title. The department shall notify the employer within five business days of an application being filed.

(3) The department shall use information sharing and integration technology to facilitate the disclosure of relevant information or records by the department, so long as an employee consents to the disclosure as required under RCW 50A.15.040.

(4) Information contained in the files and records pertaining to an employee under this chapter are confidential and not open to public inspection, other than to public employees in the performance of their official duties, except as provided in chapter 50A.25 RCW.

(2022 Ed.)

(5) The department shall develop and implement an outreach program to ensure that employees who may be qualified to receive family and medical leave benefits under this title are made aware of these benefits. Outreach information shall explain, in an easy to understand format, eligibility requirements, the application process, weekly benefit amounts, maximum benefits payable, notice and certification requirements, reinstatement and nondiscrimination rights, confidentiality, voluntary plans, and the relationship between employment protection, leave from employment, and wage replacement benefits under this title and other laws, collective bargaining agreements, and employer policies. Outreach information shall be available in English and other primary languages as defined in RCW 74.04.025.

(6) The department is authorized to inspect and audit employer files and records relating to the family and medical leave program, including employer voluntary plans. [2019 c 13 § 30; 2017 3rd sp.s. c 5 § 29. Formerly RCW 50A.04.195.]

50A.05.025 Program administration—Powers. (1) In the discharge of the duties imposed by this title, the appeal tribunal and any duly authorized representative of the commissioner shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with any dispute or the administration of this title. It shall be unlawful for any person, without just cause, to fail to comply with subpoenas issued pursuant to the provisions of this section.

(2)(a) Any authorized representative of the commissioner may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed records or documents are located, or in Thurston county. The application must:

(i) State that an order is sought pursuant to this subsection;

(ii) Adequately specify the records, documents, or testimony; and

(iii) Declare under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents or testimony are reasonably related to an investigation within the department's authority.

(b) Where the application under this subsection is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the department to subpoena the records or testimony.

(c) Any authorized representative of the commissioner may seek approval and a court may issue an order under this subsection without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation.

(3) Subsection (2) of this section is intended to comply with the holdings of *State v. Miles*, 160 Wn.2d 236 (2007) and *State v. Reeder*, 184 Wn.2d 805 (2015), and Article I, section 7 of the state Constitution. These provisions collectively require judicial review of investigative subpoenas

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under certain circumstances. The department is not required to receive court approval under subsection (2) of this section unless otherwise required by law. [2020 c 125 § 18.]

50A.05.030 Advisory committee. (1) The commissioner shall appoint an advisory committee to review issues and topics of interest related to this title.

(2) The committee is composed of ten members: (a) Four members representing employees' interests in paid family and medical leave, each of whom shall be appointed from a list of at least four names submitted by a recognized statewide organization of employees; (b) four members representing employers, each of whom shall be appointed from a list of at least four names submitted by a recognized statewide organization of employers; and (c) two ex officio members, without a vote, one of whom shall represent the department and the other shall be the ombuds for the family and medical leave program. The member representing the department shall be the chair.

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

(4) The members shall serve without compensation, but are entitled to reimbursement for travel expenses as provided in RCW 43.03.050 and 43.03.060. The committee may utilize such personnel and facilities of the department as it needs, without charge. All expenses of the committee must be paid by the family and medical leave insurance account. [2019 c 13 § 31; 2017 3rd sp.s. c 5 § 28. Formerly RCW 50A.04.200.]

50A.05.040 Ombuds. (1) The commissioner shall establish an ombuds office for family and medical leave within the department. The ombuds shall be appointed by the governor and report directly to the commissioner of the department. The ombuds is available to all employers and employees in the state.

(2) The person appointed ombuds shall hold office for a term of six years and shall continue to hold office until reappointed or until his or her successor is appointed. The governor may remove the ombuds only for neglect of duty, misconduct, or inability to perform duties. Any vacancy shall be filled by similar appointment for the remainder of the unexpired term.

(3) The ombuds shall:

(a) Offer and provide information on family and medical leave to employers and employees;

(b) Act as an advocate for employers and employees in their dealings with the department;

(c) Identify, investigate, and facilitate resolution of disputes and complaints under this title; and

(d) Refer complaints to the department when appropriate.

(4) The ombuds may conduct surveys of employees. Survey questions and results are confidential and not subject to public disclosure.

(5) The ombuds is not liable for the good faith performance of responsibilities under this title.

(6) All of the ombuds' records and files relating to any complaint or investigation made pursuant to carrying out the ombuds' duties and the identities of complainants, witnesses,

workers, or employers shall remain confidential unless disclosure is authorized by the complainant worker or his or her guardian or legal representative or the employer or the employer's legal representative. No disclosures may be made outside the office of the ombuds without the consent of the named witnesses or complainants unless the disclosure is made without the identity of any of the individuals being disclosed. [2019 c 13 § 32; 2017 3rd sp.s. c 5 § 88. Formerly RCW 50A.04.205.]

50A.05.050 Reports to legislature. (1) Beginning December 1, 2020, and annually thereafter, the department shall report to the legislature on the entire program, including:

(a) Projected and actual program participation;

(b) Premium rates;

(c) Fund balances;

(d) Benefits paid;

(e) Demographic information on program participants, including income, gender, race, ethnicity, geographic distribution by county and legislative district, and employment sector;

(f) Costs of providing benefits;

(g) Elective coverage participation;

(h) Voluntary plan participation;

(i) Outreach efforts; and

(j) Small business assistance.

(2)(a) Beginning January 1, 2023, the office of actuarial services created in RCW 50A.05.130 must annually report, by November 1st, to the advisory committee in RCW 50A.05.030 on the experience and financial condition of the family and medical leave insurance account, and the lowest future premium rates necessary to maintain solvency of the family and medical leave insurance account in the next four years while limiting fluctuation in premium rates.

(b) For calendar years 2023 through 2028, the annual reports in (a) of this subsection must be submitted to the appropriate committees of the legislature in compliance with RCW 43.01.036.

(3) Beginning October 1, 2023, the department must report quarterly to the advisory committee in RCW 50A.05.030 on premium collections, benefit payments, the family and medical leave insurance account balance, and other program expenditures. [2022 c 233 § 7; 2017 3rd sp.s. c 5 § 86. Formerly RCW 50A.04.210.]

50A.05.060 Rules. The commissioner shall adopt rules as necessary to implement this title. [2019 c 13 § 33; 2017 3rd sp.s. c 5 § 85. Formerly RCW 50A.04.215.]

50A.05.070 Family and medical leave insurance account. (1) The family and medical leave insurance account is created in the custody of the state treasurer. All receipts from premiums imposed under this title must be deposited in the account. Expenditures from the account may be used only for the purposes of the family and medical leave program. Only the commissioner or the commissioner's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW. An appropriation is required for administrative expenses, but not for benefit payments.

(2) Money deposited in the account shall remain a part of the account until expended pursuant to the requirements of this title or transferred in accordance with subsection (3) of this section. The commissioner shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriations act or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the family and medical leave insurance account.

(3) Money shall be transferred from the family and medical leave insurance account and deposited in the unemployment trust fund solely for the repayment of benefits not charged to employers as defined in RCW 50.29.021(3)(a)(vii). The commissioner shall direct the transfer, which must occur on or before the cut-off date as defined in RCW 50.29.010.

(4) Money transferred as provided in subsection (3) of this section for the repayment of benefits not charged to employers shall be deposited in the unemployment compensation fund and shall remain a part of the unemployment compensation fund until expended pursuant to RCW 50.16.030. The commissioner shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund. [2020 c 86 § 5; 2019 c 13 § 34; 2017 3rd sp.s. c 5 § 82. Formerly RCW 50A.04.220.]

Conflict with federal requirements—2020 c 86: See note following RCW 50.12.200.

50A.05.080 Family and medical leave enforcement account. The family and medical leave enforcement account is created in the custody of the state treasurer. Any money in the family leave insurance account created in section 19, chapter 357, Laws of 2007 is transferred to the account created in this section. Any penalties and interest collected under RCW 50A.15.060, 50A.15.090, 50A.20.020, 50A.20.030, 50A.45.010, 50A.45.025, and 50A.30.070 shall be deposited into the account and shall be used only for the purposes of administering and enforcing this title. Only the commissioner may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2019 c 13 § 35; 2017 3rd sp.s. c 5 § 76. Formerly RCW 50A.04.225.]

50A.05.090 Collective bargaining agreements. (Expires December 31, 2023.) (1) Nothing in this title requires any party to a collective bargaining agreement in existence on October 19, 2017, to reopen negotiations of the agreement or to apply any of the rights and responsibilities under this title unless and until the existing agreement is reopened or renegotiated by the parties or expires.

(2) This section expires December 31, 2023. [2022 c 233 § 2; 2019 c 13 § 37; 2017 3rd sp.s. c 5 § 87. Formerly RCW 50A.04.235.]

(2022 Ed.)

50A.05.100 Discrimination laws not affected. Nothing in this title shall be construed to modify or affect any state or local law prohibiting discrimination on the basis of race, creed, religion, color, national origin, families with children, sex, marital status, sexual orientation including gender expression or identity, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability. [2019 c 13 § 41; 2017 3rd sp.s. c 5 § 77. Formerly RCW 50A.04.255.]

50A.05.110 No continuing entitlement or contractual right. This title does not create a continuing entitlement or contractual right. The legislature reserves the right to amend or repeal all or part of this title at any time, and a benefit or other right granted under this title exists subject to the legislature's power to amend or repeal this title. There is no vested private right of any kind against such amendment or repeal. [2019 c 13 § 43; 2017 3rd sp.s. c 5 § 81. Formerly RCW 50A.04.265.]

50A.05.120 Conflict with federal requirements. If any part of this title 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 title is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this title. Rules adopted under this title 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. [2019 c 13 § 64; 2017 3rd sp.s. c 5 § 101. Formerly RCW 50A.04.900.]

50A.05.125 Continuity with prior law. (1) The provisions of chapter 49.78 RCW as they existed prior to January 1, 2020, apply to employee and employer conduct, acts, or omissions occurring on or before December 31, 2019, including but not limited to the enforcement provisions set forth in RCW 49.78.330 as they existed prior to January 1, 2020. Accordingly, a cause of action for conduct, acts, or omissions occurring on or before December 31, 2019, under chapter 49.78 RCW remains available within its applicable statute of limitations. As an exercise of the state's police powers and for remedial purposes, this subsection applies retroactively to claims based on conduct, acts, or omissions that occurred on or before December 31, 2019.

(2) The provisions of this title apply to employee and employer conduct, acts, or omissions occurring on or after January 1, 2020, including but not limited to the enforcement provisions set forth in RCW 50A.40.040. [2021 c 59 § 2.]

Intent—2021 c 59: "(1) Since enacted in 1989, chapter 49.78 RCW afforded employees the right to unpaid family and medical leave, to return to their jobs afterwards, and to enforce those rights. In 2017, the legislature passed Substitute Senate Bill No. 5975, creating the paid family and medical leave act to replace and enhance the existing unpaid family and medical leave laws.

(2) The passage of the paid family and medical leave act repealed chapter 49.78 RCW and replaced its provisions as a new title in Title 50A RCW. However, the passage of the paid family and medical leave act did not, and was not intended to, undermine any right, liability, or obligation existing under chapter 49.78 RCW prior to its repeal, or under any rule or order

adopted under those statutes. Likewise, the passage of the paid family and medical leave act was not intended to affect any proceeding that had been, or could be, brought under the existing chapter 49.78 RCW relating to conduct, acts, or omissions occurring on or before December 31, 2019. To the contrary, the legislature incorporated the employment protections provisions of chapter 49.78 RCW wholesale into the new Title 50A RCW. Moreover, the legislature specifically delayed the effective date of the repeal of chapter 49.78 RCW by over two years after the effective date of the rest of the act, in part, in order to ensure that there would be continuity in the protections provided and rights available under chapter 49.78 RCW and its successor provisions in Title 50A RCW.

(3) The legislature intends to clarify that the passage of the paid family and medical leave act did not sever, impair, extinguish, or in any way affect the rights, liabilities, or obligations under chapter 49.78 RCW as it existed prior to January 1, 2020. A cause of action for conduct, acts, or omissions occurring on or before December 31, 2019, under chapter 49.78 RCW remains available within its applicable statute of limitations." [2021 c 59 § 1.]

Effective date—2021 c 59: "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 16, 2021]." [2021 c 59 § 3.]

50A.05.130 Office of actuarial services. (1) The office of actuarial services is established within the department.

(2) The head of the office must be qualified by education and experience in the field of actuarial science. [2022 c 233 § 5.]

50A.05.135 Contracting for actuarial services. (Expires December 31, 2023.) (1) The office of financial management must enter into a contract with a public or private entity for actuarial services to provide a report to the appropriate committees of the legislature by October 1, 2022, on the following:

(a) The experience and financial condition of the family and medical leave insurance account created in RCW 50A.05.070;

(b) Any recommendations for options to modify the provisions of chapter 50A.10 RCW to maintain the long-term stability and solvency of the family and medical leave insurance account; and

(c) A comparison of the provisions of RCW 50A.10.030 with similar provisions in those states with both paid medical leave insurance and paid family leave insurance programs.

(2) The contract is exempt from the competitive procurement requirements in chapter 39.26 RCW.

(3) The report in this section must comply with RCW 43.01.036.

(4) This section expires December 31, 2023. [2022 c 233 § 8.]

Effective date—2022 c 233 § 8: "Section 8 of 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, 2022]." [2022 c 233 § 13.]

Chapter 50A.10 RCW

PREMIUMS

Sections

50A.10.010	Elective coverage—Self-employed.
50A.10.020	Elective coverage—Tribes.
50A.10.030	Premiums—Solvency surcharge—Limitation on local regulation.
50A.10.040	Out-of-state employees—Premium waiver.
50A.10.050	Termination or disposal of business—Premium payment—Successor liability.

50A.10.010 Elective coverage—Self-employed. (1)

For benefits payable beginning January 1, 2020, any self-employed person, including a sole proprietor, independent contractor, partner, or joint venturer, may elect coverage under this title for an initial period of not less than three years and subsequent periods of not less than one year immediately following a period of coverage. Those electing coverage under this section must elect coverage for both family leave and medical leave and are responsible for payment of one hundred percent of all premiums assessed to an employee under RCW 50A.10.030. The self-employed person must file a notice of election in writing with the department, in a manner as required by the department in rule. The self-employed person is eligible for family and medical leave benefits after working eight hundred twenty hours in the state during the qualifying period following the date of filing the notice.

(2) A self-employed person who has elected coverage may withdraw from coverage within thirty days after the end of each period of coverage, or at such other times as the commissioner may adopt by rule, by filing a notice of withdrawal in writing with the commissioner, such withdrawal to take effect not sooner than thirty days after filing the notice with the commissioner.

(3) The department may cancel elective coverage if the self-employed person fails to make required payments or file reports. The department may collect due and unpaid premiums and may levy an additional premium for the remainder of the period of coverage. The cancellation shall be effective no later than thirty days from the date of the notice in writing advising the self-employed person of the cancellation.

(4) Those electing coverage are considered employers or employees where the context so dictates.

(5) For the purposes of this section, "independent contractor" means an individual excluded from employment under RCW 50A.05.010(8)(b) (iii) and (iv).

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

(7) The department shall adopt rules for determining the hours worked and the wages of individuals who elect coverage under this section and rules for enforcement of this section. [2020 c 125 § 2; 2019 c 13 § 19; 2017 3rd sp.s. c 5 § 10. Formerly RCW 50A.04.105.]

50A.10.020 Elective coverage—Tribes. A federally recognized tribe may elect coverage under RCW 50A.10.010. The department shall adopt rules to implement this section. [2019 c 13 § 20; 2018 c 141 § 2; 2017 3rd sp.s. c 5 § 11. Formerly RCW 50A.04.110.]

50A.10.030 Premiums—Solvency surcharge—Limitation on local regulation. (1)(a) Beginning January 1, 2019, the department shall assess for each individual in employment with an employer and for each individual electing coverage a premium based on the amount of the individual's wages subject to subsection (4) of this section.

(b) The premium rate for family leave benefits shall be equal to one-third of the total premium rate.

(c) The premium rate for medical leave benefits shall be equal to two-thirds of the total premium rate.

(2) For calendar year 2022 and thereafter, the commissioner shall determine the percentage of paid claims related to family leave benefits and the percentage of paid claims related to medical leave benefits and adjust the premium rates set in subsection (1)(b) and (c) of this section by the proportional share of paid claims.

(3)(a) Beginning January 1, 2019, and ending December 31, 2020, the total premium rate shall be four-tenths of one percent of the individual's wages subject to subsection (4) of this section.

(b) For family leave premiums, an employer may deduct from the wages of each employee up to the full amount of the premium required.

(c) For medical leave premiums, an employer may deduct from the wages of each employee up to forty-five percent of the full amount of the premium required.

(d) An employer may elect to pay all or any portion of the employee's share of the premium for family leave or medical leave benefits, or both.

(4) The commissioner must annually set a maximum limit on the amount of wages that is subject to a premium assessment under this section that is equal to the maximum wages subject to taxation for social security as determined by the social security administration.

(5)(a) Employers with fewer than fifty employees employed in the state are not required to pay the employer portion of premiums for family and medical leave.

(b) If an employer with fewer than fifty employees elects to pay the premiums, the employer is then eligible for assistance under RCW 50A.24.010.

(6) For calendar year 2021 and thereafter, the total premium rate shall be based on the family and medical leave insurance account balance ratio as of September 30th of the previous year. The commissioner shall calculate the account balance ratio by dividing the balance of the family and medical leave insurance account by total covered wages paid by employers and those electing coverage. The division shall be carried to the fourth decimal place with the remaining fraction disregarded unless it amounts to five hundred-thousandths or more, in which case the fourth decimal place shall be rounded to the next higher digit. If the account balance ratio is:

(a) Zero to nine hundredths of one percent, the premium is six tenths of one percent of the individual's wages;

(b) One tenth of one percent to nineteen hundredths of one percent, the premium is five tenths of one percent of the individual's wages;

(c) Two tenths of one percent to twenty-nine hundredths of one percent, the premium is four tenths of one percent of the individual's wages;

(d) Three tenths of one percent to thirty-nine hundredths of one percent, the premium is three tenths of one percent of the individual's wages;

(e) Four tenths of one percent to forty-nine hundredths of one percent, the premium is two tenths of one percent of the individual's wages; or

(f) Five tenths of one percent or greater, the premium is one tenth of one percent of the individual's wages.

(2022 Ed.)

(7) Beginning January 1, 2021, if the account balance ratio calculated in subsection (6) of this section is below five hundredths of one percent, the commissioner must assess a solvency surcharge at the lowest rate necessary to provide revenue to pay for the administrative and benefit costs of family and medical leave, for the calendar year, as determined by the commissioner. The solvency surcharge shall be at least one-tenth of one percent and no more than six-tenths of one percent and be added to the total premium rate for family and medical leave benefits. Any projected expenditures of general fund moneys into the family and medical leave insurance account pursuant to section 723, chapter 297, Laws of 2022 must be excluded from the commissioner's determination of the necessary revenue to pay the administrative and benefit costs of family and medical leave for the calendar year.

(8)(a) The employer must collect from the employees the premiums and any surcharges provided under this section through payroll deductions and remit the amounts collected to the department.

(b) In collecting employee premiums through payroll deductions, the employer shall act as the agent of the employees and shall remit the amounts to the department as required by this title.

(c) On September 30th of each year, the department shall average the number of employees reported by an employer over the last four completed calendar quarters to determine the size of the employer for the next calendar year for the purposes of this section and RCW 50A.24.010.

(9) Premiums shall be collected in the manner and at such intervals as provided in this title and directed by the department.

(10) Premiums collected under this section are placed in trust for the employees and employers that the program is intended to assist.

(11) A city, code city, town, county, or political subdivision may not enact a charter, ordinance, regulation, rule, or resolution:

(a) Creating a paid family or medical leave insurance program that alters or amends the requirements of this title for any private employer;

(b) Providing for local enforcement of the provisions of this title; or

(c) Requiring private employers to supplement duration of leave or amount of wage replacement benefits provided under this title. [2022 c 297 § 962; 2019 c 13 § 21; 2017 3rd sp.s. c 5 § 8. Formerly RCW 50A.04.115.]

Effective date—2022 c 297: See note following RCW 43.79.565.

50A.10.040 Out-of-state employees—Premium waiver. (1) An employer may file an application with the department for a conditional waiver for the payment of family and medical leave premiums, assessed under RCW 50A.10.030, for any employee who:

(a) Primarily performs work outside of the state;

(b) Is employed in the state on a limited or temporary work schedule; and

(c) Is not expected to be employed in the state for eight hundred twenty hours or more in a period of four consecutive completed calendar quarters.

(2) Both the employee and employer must sign the application verifying their belief that the conditions in subsection (1) of this section will be met.

(3) If the department finds any of the conditions in subsection (1) of this section are no longer satisfied, or were not satisfied at any point after a conditional waiver was approved and is in effect, the department will consider the conditional waiver expired and the employer and employee will be responsible for their shares of all premiums that would have been paid during this period had the waiver not been granted. Upon payment of the missed premiums, the employee will be credited for the hours worked and will be eligible for benefits under this title as if the premiums were originally paid. [2020 c 125 § 3; 2019 c 13 § 22; 2017 3rd sp.s. c 5 § 9. Formerly RCW 50A.04.120.]

50A.10.050 Termination or disposal of business—Premium payment—Successor liability. Whenever any employer quits business, or sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any premiums payable under this title shall become immediately due and payable, and the employer shall, within ten days, make a return and pay the premiums due; and any person who becomes a successor to such business shall become liable for the full amount of the premiums and withhold from the purchase price a sum sufficient to pay any premiums due from the employer until such time as the employer produces a receipt from the employment security department showing payment in full of any premiums due or a certificate that no premium is due and, if such premium is not paid by the employer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of premiums, and the payment thereof by such successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the employer. A successor may not be liable for any premiums due from the person from whom that person has acquired a business or stock of goods if that person gives written notice to the employment security department of such acquisition and no assessment is issued by the department within one hundred eighty days of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor. [2019 c 13 § 23; 2017 3rd sp.s. c 5 § 67. Formerly RCW 50A.04.125.]

Chapter 50A.15 RCW BENEFITS

Sections

50A.15.010	Employee eligibility.
50A.15.020	Benefit—Amount and duration.
50A.15.030	Employee notice to employer.
50A.15.040	Application for benefits.
50A.15.050	Timing of benefit payments—Employer contest of application.
50A.15.060	Benefit exclusions and disqualifications—Employee penalties.
50A.15.065	Expiration of leave entitlement.
50A.15.070	Federal income taxes—Withholding.
50A.15.080	Child support obligations—Withholding.
50A.15.090	Repayment and recovery of benefit overpayments.

50A.15.100	Unemployment compensation, industrial insurance, and disability insurance laws—Effect on title.
50A.15.110	Leave available under other laws—Coordination.
50A.15.120	Assignment, pledge, or encumbrance of right to benefits due or payable void—Exemptions.
50A.15.130	Pandemic leave assistance employee grants—Eligibility.

50A.15.010 Employee eligibility. Employees are eligible for family and medical leave benefits as provided in this title after working for at least eight hundred twenty hours in employment during the qualifying period. [2019 c 13 § 2; 2017 3rd sp.s. c 5 § 3. Formerly RCW 50A.04.015.]

50A.15.020 Benefit—Amount and duration. (1) Beginning January 1, 2020, family and medical leave are available and benefits are payable to a qualified employee under this section.

(a) Following a waiting period consisting of the first seven consecutive calendar days, benefits are payable when family or medical leave is required. However, no waiting period is required for leave for the birth or placement of a child, or for leave because of any qualifying exigency as defined under RCW 50A.05.010(10)(c). The waiting period begins the previous Sunday of the week when an otherwise eligible employee takes leave for the minimum claim duration under subsection (2)(c) of this section. Eligible employees may satisfy the waiting period requirement while simultaneously receiving paid time off for any part of the waiting period.

(b) Benefits may continue during the continuance of the need for family or medical leave, subject to the maximum and minimum weekly benefits, duration, and other conditions and limitations established in this title.

(2) The weekly benefit shall be prorated by the percentage of hours on leave compared to the number of hours provided as the typical workweek hours as defined in RCW 50A.05.010.

(a) The benefits in this section, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar.

(b) Hours on leave claimed for benefits under this title, if not a multiple of one hour, shall be reduced to the next lower multiple of one hour.

(c) The minimum claim duration payment is for eight consecutive hours of leave.

(3)(a) The maximum duration of paid family leave may not exceed twelve times the typical workweek hours during a period of fifty-two consecutive calendar weeks.

(b) The maximum duration of paid medical leave may not exceed twelve times the typical workweek hours during a period of fifty-two consecutive calendar weeks. This leave may be extended an additional two times the typical workweek hours if the employee experiences a serious health condition with a pregnancy that results in incapacity.

(c) An employee is not entitled to paid family and medical leave benefits under this title that exceeds a combined total of sixteen times the typical workweek hours. The combined total of family and medical leave may be extended to eighteen times the typical workweek hours if the employee experiences a serious health condition with a pregnancy that results in incapacity.

(4)(a) Any paid leave benefits under this chapter used in the postnatal period by an employee eligible for benefits under RCW 50A.05.010(23)(a)(ii)(B) must be medical leave, subject to the maximum and minimum weekly benefits, duration, and other conditions and limitations established in this title, unless the employee chooses to use family leave during the postnatal period.

(b) Certification of a serious health condition is not required for paid leave benefits used in the postnatal period by an employee eligible for benefits under RCW 50A.05.010(23)(a)(ii)(B).

(5) The weekly benefit for family and medical leave shall be determined as follows: If the employee's average weekly wage is: (a) Equal to or less than one-half of the state average weekly wage, then the benefit amount is equal to ninety percent of the employee's average weekly wage; or (b) greater than one-half of the state average weekly wage, then the benefit amount is the sum of: (i) Ninety percent of one-half of the state average weekly wage; and (ii) fifty percent of the difference of the employee's average weekly wage and one-half of the state average weekly wage.

(6)(a) The maximum weekly benefit for family and medical leave that occurs on or after January 1, 2020, shall be one thousand dollars. By September 30, 2020, and by each subsequent September 30th, the commissioner shall adjust the maximum weekly benefit amount to ninety percent of the state average weekly wage. The adjusted maximum weekly benefit amount takes effect on the following January 1st.

(b) The minimum weekly benefit shall not be less than one hundred dollars per week except that if the employee's average weekly wage at the time of family or medical leave is less than one hundred dollars per week, the weekly benefit shall be the employee's full wage. [2022 c 233 § 3; 2020 c 125 § 4; 2019 c 13 § 3; 2017 3rd sp.s. c 5 § 6. Formerly RCW 50A.04.020.]

50A.15.030 Employee notice to employer. (1) If the necessity for leave for the birth or placement of a child with the employee is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than thirty days' notice, before the date the leave is to begin, of the employee's intention to take leave for the birth or placement of a child, except that if the date of the birth or placement requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable.

(2) If the necessity for leave for a family member's serious health condition or the employee's serious health condition is foreseeable based on planned medical treatment, the employee:

(a) Must make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the family member, as appropriate; and

(b) Must provide the employer with not less than thirty days' notice, before the date the leave is to begin, of the employee's intention to take leave for a family member's serious health condition or the employee's serious health condition, except that if the date of the treatment requires leave to begin in less than thirty days, the employee must provide such notice as is practicable.

(2022 Ed.)

(3) The employer may waive any or all of the employee notice requirements in this section and in RCW 50A.15.040(1)(f). [2019 c 13 § 5; 2017 3rd sp.s. c 5 § 12. Formerly RCW 50A.04.030.]

50A.15.040 Application for benefits. (1) Family and medical leave insurance benefits are payable to an employee during a period in which the employee is unable to perform his or her regular or customary work because he or she is on family and medical leave if the employee:

(a) Files an application for benefits as required by rules adopted by the commissioner;

(b) Has met the eligibility requirements of RCW 50A.15.010 or the elective coverage requirements under RCW 50A.10.010;

(c) Consents to the disclosure of information or records deemed private and confidential under state law. Initial disclosure of this information and these records by another state agency to the department is solely for purposes related to the administration of this title. Further disclosure of this information or these records is subject to chapter 50A.25 RCW and RCW 50A.05.020(3) and 50A.20.030;

(d) Provides his or her social security number;

(e) Provides a document authorizing the family member's or employee's health care provider, as applicable, to disclose the family member's or employee's health care information in the form of the certification of a serious health condition;

(f) Provides the employer from whom family and medical leave is to be taken with written notice of the employee's intention to take family leave in the same manner as an employee is required to provide notice in RCW 50A.15.030 and, in the employee's initial application for benefits, attests that written notice has been provided, unless notice has been waived by the employer under RCW 50A.15.030(3); and

(g) Provides documentation of a military exigency, if requested by the employer.

(2) An employee who is not in employment for an employer at the time of filing an application for benefits is exempt from subsection (1)(f) and (g) of this section.

(3) Beginning July 1, 2022, and until the 12 months after the end of the state of emergency declared by the governor due to COVID-19, the department must ask the employee applicant whether their family or medical leave is related to the COVID-19 pandemic. Initial disclosure of this information is solely for purposes related to the administration of this title, including monitoring potential impacts on the solvency and stability of the family and medical leave insurance account created in RCW 50A.05.070. Further disclosure of this information or these records is subject to chapter 50A.25 RCW and RCW 50A.05.020(3) and 50A.20.030. [2022 c 233 § 6; 2019 c 13 § 6; 2017 3rd sp.s. c 5 § 13. Formerly RCW 50A.04.035.]

50A.15.050 Timing of benefit payments—Employer contest of application. (1) Benefits provided under this title shall be paid periodically and promptly, except when an employer contests a period of family or medical leave. The department must send the first benefit payment to the employee within fourteen calendar days after the first properly completed weekly application is received by the depart-

ment. Subsequent payments must be sent at least biweekly thereafter. If the employer contests an initial application for family or medical leave benefits, the employer must notify the employee and the department in a manner prescribed by the commissioner within eighteen days of receipt of notice from the department of the employee's filing of an application for benefits, as provided under RCW 50A.05.020. Failure to timely contest an initial application shall constitute a waiver of objection to the family or medical leave application. Any inquiry which requires the employee's response in order to continue benefits uninterrupted or unmodified shall provide a reasonable time period in which to respond and include a clear and prominent statement of the deadline for responding and consequences of failing to respond.

(2) If an employee has received one or more benefit payments under this title, is in continued claim status, and his or her eligibility for benefits is questioned by the department or contested by the employer, the employee will be conditionally paid benefits without delay for any periods for which the employee files a claim for benefits, until and unless the employee has been provided adequate notice and an opportunity to be heard. The employee's right to retain such payments is conditioned upon the department's finding the employee to be eligible for such payments.

(a) At the employee's request, the department may hold conditional payments until the question of eligibility has been resolved.

(b) Payments will be issued for any benefits withheld under (a) of this subsection if the department determines the employee is eligible for benefits.

(c) If it is determined that the employee is ineligible for the weeks paid conditionally, the overpayment cannot be waived and must be repaid.

(3) The department must develop, in rule, a process by which an employer may contest an initial application for family or medical leave benefits. [2019 c 13 § 7; 2017 3rd sp.s. c 5 § 7. Formerly RCW 50A.04.040.]

50A.15.060 Benefit exclusions and disqualifications—Employee penalties. (1) An employee is not entitled to paid family or medical leave benefits under this title:

(a) For any absence occasioned by the willful intention of the employee to bring about injury to or the sickness of the employee or another, or resulting from any injury or sickness sustained in the perpetration by the employee of an illegal act;

(b) For any family or medical leave commencing before the employee becomes qualified for benefits under this title;

(c) For an employee who is on suspension from his or her employment; or

(d) For any period of time during which an employee works for remuneration or profit.

(2) An employer may offer supplemental benefit payments to an employee on family or medical leave in addition to any paid family or medical leave benefits the employee is receiving.

(a) Supplemental benefit payments are not considered remuneration under *RCW 50A.05.010(21) and the department will not prorate or reduce an employee's weekly benefit amount due to the receipt of supplemental benefit payments.

(b) The choice to receive supplemental benefit payments lies with the employee. Nothing in this section shall be construed as requiring an employee to receive or an employer to provide supplemental benefit payments.

(3) An individual is disqualified for benefits for any week he or she has knowingly and willfully made a false statement or representation involving a material fact or knowingly and willfully failed to report a material fact and, as a result, has obtained or attempted to obtain any benefits under the provisions of this title. An individual disqualified for benefits under this subsection (3) for the:

(a) First time is disqualified for an additional twenty-six weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of fifteen percent of the amount of benefits overpaid or deemed overpaid;

(b) Second time is also disqualified for an additional fifty-two weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of twenty-five percent of the amount of benefits overpaid or deemed overpaid;

(c) Third time and any time thereafter is also disqualified for an additional one hundred four weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of fifty percent of the amount of benefits overpaid or deemed overpaid.

(4) All penalties collected under this section must be deposited in the family and medical leave enforcement account created under RCW 50A.05.080. [2020 c 125 § 5; 2019 c 13 § 8; 2017 3rd sp.s. c 5 § 5. Formerly RCW 50A.04.045.]

*Reviser's note: RCW 50A.05.010 was amended by 2022 c 233 § 1, changing subsection (21) to subsection (22).

50A.15.065 Expiration of leave entitlement. (1) The entitlement to family leave benefits for the birth or placement of a child expires at the end of the twelve-month period beginning on the date of such birth or placement.

(2) The entitlement to family leave benefits for a family member's serious health condition, or leave for qualifying exigency, expires at the end of the twelve-month period beginning on the date of which the employee filed an application for the benefits.

(3) The entitlement to medical leave benefits for the employee's own serious health condition expires at the end of the twelve-month period beginning on the date on which the employee filed an application for medical leave benefits. [2017 3rd sp.s. c 5 § 4. Formerly RCW 50A.04.050.]

50A.15.070 Federal income taxes—Withholding. (1) If the internal revenue service determines that family or medical leave benefits under this title are subject to federal income tax, the department must advise an employee filing a new application for benefits, at the time of filing such application, that:

(a) The internal revenue service has determined that benefits are subject to federal income tax;

(b) Requirements exist pertaining to estimated tax payments;

(c) The employee may elect to have federal income tax deducted and withheld from the employee's payment of ben-

efits at the amount specified in the federal internal revenue code; and

(d) The employee is permitted to change a previously elected withholding status.

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

(3) The commissioner shall follow all procedures specified by the federal internal revenue service pertaining to the deducting and withholding of income tax. [2019 c 13 § 9; 2017 3rd sp.s. c 5 § 80. Formerly RCW 50A.04.055.]

50A.15.080 Child support obligations—Withholding. (1) If the department determines an employee is qualified for benefits and that the employee owes child support obligations, the department shall notify the applicable state or local child support enforcement agency and deduct and withhold an amount from benefits in a manner consistent with RCW 50.40.050.

(2) For the purposes of this section, "child support obligations" means only those obligations that are being enforced pursuant to a plan described in section 454 of the social security act which has been approved by the secretary of health and human services under Title IV-D of the social security act (42 U.S.C. Sec. 651 et seq.).

(3) Consistent with chapter 50A.25 RCW, the department may verify child support obligations with the department of social and health services. [2020 c 125 § 6; 2019 c 13 § 10; 2017 3rd sp.s. c 5 § 30. Formerly RCW 50A.04.060.]

50A.15.090 Repayment and recovery of benefit overpayments. (1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of a back pay award, a settlement affecting the allowance of benefits, fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of or final payment made on the individual's applicable eligibility period for which the purported overpayment was made, whichever is later, unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that the overpayment was not the result of fraud, misrepresentation, willful nondisclosure, conditional payment, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience. An overpayment waived under this subsection shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the over-

payment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, the determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days' notice, using a method by which the mailing can be tracked or the delivery can be confirmed, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee under RCW 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed within five days of its filing with the clerk to the person(s) mentioned in the warrant using a method by which the mailing can be tracked or the delivery can be confirmed.

(4) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For premium purposes, the back pay award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of paid family or medical leave benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the paid family and medical leave fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any premiums due for paid family and medical leave insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer that shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50A.45.040.

(5) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50A.15.060 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of the individual's monthly payments either partially or in full.

(6) Any penalties and interest collected pursuant to this section must be deposited into the family and medical leave enforcement account.

(7) The department shall: (a) Conduct social security number cross-match audits or engage in other more effective activities that ensure that individuals are entitled to all amounts of benefits that they are paid; and (b) engage in other detection and recovery of overpayment and collection activities. [2019 c 13 § 11; 2017 3rd sp.s. c 5 § 32. Formerly RCW 50A.04.065.]

50A.15.100 Unemployment compensation, industrial insurance, and disability insurance laws—Effect on title.

(1) Leave from employment under this title is in addition to leave from employment during which benefits are paid or are payable under Title 51 RCW or other applicable federal or state industrial insurance laws.

(2) An employee is disqualified from receiving family or medical leave benefits under this title for any week in which the employee is receiving, has received, or will receive compensation, as determined by the governing state or federal agency under:

- (a) Title 50 RCW;
- (b) RCW 51.32.060;
- (c) RCW 51.32.090; or

(d) Any other applicable federal unemployment compensation, industrial insurance, or disability insurance laws. [2020 c 125 § 7; 2019 c 13 § 38; 2017 3rd sp.s. c 5 § 69. Formerly RCW 50A.04.240.]

50A.15.110 Leave available under other laws—Coordination. (1) Leave under this title and leave under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on October 19, 2017) is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth.

(2) Unless otherwise expressly permitted by the employer, leave taken under this title must be taken concurrently with any leave taken under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on October 19, 2017). [2019 c 13 § 40; 2017 3rd sp.s. c 5 § 79. Formerly RCW 50A.04.250.]

50A.15.120 Assignment, pledge, or encumbrance of right to benefits due or payable void—Exemptions. Any assignment, pledge, or encumbrance of any right to benefits that are or may become due or payable under this title is void. Such rights to benefits are exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debts, except as provided in RCW 50A.15.080. Benefits received by any employee, so long as they are not commingled with other funds of the recipient, are exempt from any remedy whatsoever for collection of all debts except debts incurred for necessities furnished to such employee or the employee's spouse or dependents during the time when such individual was receiving family or medical leave. Any waiver of any exemption provided for in this section is void. [2019 c 13 § 69.]

50A.15.130 Pandemic leave assistance employee grants—Eligibility. (Expires June 30, 2023.) (1) Employees who do not meet the hours worked threshold for eligibility under RCW 50A.15.010 or 50A.30.020(1), and are otherwise eligible under Title 50A RCW for a claim with an effective start date in 2021 through March 31, 2022, are eligible for a pandemic leave assistance employee grant as provided under this section if they meet any of the following hours thresholds:

(a) Worked 820 hours in employment during the first through fourth calendar quarters of 2019; or

(b) Worked 820 hours in employment during the second through fourth calendar quarters of 2019 and first calendar quarter of 2020.

(2)(a) Subsection (1) of this section does not apply to an employee who does not meet the hours worked threshold for eligibility under RCW 50A.15.010 or 50A.30.020(1) because of an employment separation due to misconduct or a voluntary separation unrelated to the COVID-19 pandemic.

(b) An employee seeking eligibility under this section must attest, in a manner prescribed by the department, that their failure to meet the hours worked threshold for eligibility under RCW 50A.15.010 or 50A.30.020(1) is not due to the reasons specified in (a) of this subsection.

(3) Employees may file a claim with the department for a pandemic leave assistance employee grant beginning August 1, 2021.

(4) The amount of the pandemic leave assistance employee grant to each eligible employee must be equal to the weekly benefit amount calculated in Title 50A RCW and any rules promulgated thereunder. In calculating the weekly benefit amount for nonsalaried employees eligible under sub-

section (1) of this section, the typical workweek hours are the quotient derived by dividing the sum of the employee's hours reported by the sum of the number of weeks for which the employer reported hours.

(5) An employee is not eligible for a pandemic leave assistance employee grant under this section for any week in which the employee has received, is receiving, or will receive unemployment compensation under Title 50 RCW, workers' compensation under Title 51 RCW, or any other applicable federal unemployment compensation, industrial insurance, or disability insurance laws.

(6) Employers with 150 or fewer employees may be eligible for a pandemic leave assistance employer grant to assist with the costs of an employee on leave, as provided in RCW 50A.24.020.

(7) Grants under this section are available only until funding provided by the legislature solely for these purposes is exhausted. [2021 c 109 § 2.]

Finding—Intent—2021 c 109: "(1) The legislature finds that many Washington workers have suffered direct effects from the COVID-19 pandemic. Due to the unprecedented global shutdown in response to COVID-19, many Washington workers who have paid into the paid family and medical leave insurance program are unable to access their benefits through no fault of their own. Workers recovering from COVID-19 or caring for an individual who is severely ill due to COVID-19 are unable to access their benefits.

(2) Therefore, the legislature intends to provide financial assistance to workers who are not otherwise eligible for paid family and medical leave due to COVID-19's impact on their ability to meet the hours worked threshold. The legislature intends to provide a pandemic leave assistance employee grant to provide an equivalent benefit to what the worker would otherwise be eligible to receive under the paid family and medical leave insurance program. Additionally, the legislature intends to provide a pandemic leave assistance employer grant to help offset small business employers' costs related to employees on leave who are receiving a pandemic leave assistance employee grant.

(3) The legislature intends to utilize federal funding from the America rescue plan act to provide financial assistance to COVID-19 impacted workers. The legislature does not intend for this worker assistance to affect the state's paid family and medical leave insurance account." [2021 c 109 § 1.]

Construction—2021 c 109: "Nothing in this act shall be construed to limit or interfere with the requirements, rights, and responsibilities of employers and employees under Title 50A RCW, except as provided in this act. Employees and employers receiving a grant under section 2 or 3 of this act must comply with all provisions of Title 50A RCW and any rules promulgated thereunder." [2021 c 109 § 4.]

Rule making—2021 c 109: "The employment security department may adopt rules to implement this act." [2021 c 109 § 5.]

Expiration date—2021 c 109: "Sections 1 through 5 of this act expire June 30, 2023." [2021 c 109 § 6.]

Effective date—2021 c 109: "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 21, 2021]." [2021 c 109 § 7.]

Chapter 50A.20 RCW EMPLOYER REQUIREMENTS

Sections

- 50A.20.010 Employee notice of rights.
- 50A.20.020 Posting of notice regarding title—Penalties.
- 50A.20.030 Employer requirements.

50A.20.010 Employee notice of rights. Whenever an employee of an employer who is qualified for benefits under this title is absent from work to provide family leave, or take medical leave for more than seven consecutive days, the employer shall provide the employee with a written statement

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of the employee's rights under this title in a form prescribed by the commissioner. The statement must be provided to the employee within five business days after the employee's seventh consecutive day of absence due to family or medical leave, or within five business days after the employer has received notice that the employee's absence is due to family or medical leave, whichever is later. [2019 c 13 § 12; 2017 3rd sp.s. c 5 § 71. Formerly RCW 50A.04.070.]

50A.20.020 Posting of notice regarding title—Penalties. Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the commissioner, setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertaining to the filing of a complaint. Any employer that willfully violates this section may be subject to a civil penalty of not more than one hundred dollars for each separate offense. Any penalties collected by the department under this section shall be deposited into the family and medical leave enforcement account. [2019 c 13 § 13; 2017 3rd sp.s. c 5 § 75. Formerly RCW 50A.04.075.]

50A.20.030 Employer requirements. (1) In the form and at the times specified in this title and by the commissioner, an employer shall make reports, furnish information, and collect and remit premiums as required by this title to the department. If the employer is a temporary help company that provides employees on a temporary basis to its customers, the temporary help company is considered the employer for purposes of this section.

(2)(a) An employer must keep at the employer's place of business a record of employment, for a period of six years, from which the information needed by the department for purposes of this title may be obtained. This record shall at all times be open to the inspection of the commissioner.

(b) Information obtained under this title from employer records is confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, an interested party shall be supplied with information from employer records to the extent necessary for the proper presentation of the case in question. An employer may authorize inspection of the employer's records by written consent.

(3) The requirements relating to the collection of family and medical leave premiums are as provided in this title. Before issuing a warning letter, the department shall enforce the collection of premiums through conference and conciliation. These requirements apply to:

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

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

(c) A successor in the manner specified in RCW 50A.10.050; and

(d) An officer, member, or owner having control or supervision of payment and/or reporting of family and medical leave premiums, or who is charged with the responsibility for the filing of returns, in the manner specified in RCW 50A.45.010.

(4) Notwithstanding subsection (3) of this section, appeals are governed by RCW 50A.50.010. [2019 c 13 § 14; 2017 3rd sp.s. c 5 § 33. Formerly RCW 50A.04.080.]

Chapter 50A.24 RCW SMALL BUSINESS ASSISTANCE

Sections

50A.24.010 Grants.

50A.24.020 Pandemic leave assistance employer grants—Eligibility.

50A.24.010 Grants. (1) The legislature recognizes that while family leave and medical leave benefit both employees and employers, there may be costs that disproportionately impact small businesses. To equitably balance the risks among employers, the legislature intends to assist small businesses with the costs of an employee's use of family or medical leave.

(2) Employers with one hundred fifty or fewer employees and employers with fifty or fewer employees who are assessed all premiums under RCW 50A.10.030(5)(b) may apply to the department for a grant under this section.

(3)(a) An employer may receive a grant of three thousand dollars if the employer hires a temporary worker to replace an employee on family or medical leave for a period of seven days or more.

(b) For an employee's family or medical leave, an employer may receive a grant of up to one thousand dollars as reimbursement for significant additional wage-related costs due to the employee's leave.

(c) An employer may receive a grant under (a) or (b) of this subsection, but not both, except that an employer who received a grant under (b) of this subsection may receive a grant of the difference between the grant awarded under (b) of this subsection and three thousand dollars if the employee on leave extended the leave beyond the leave initially planned and the employer hired a temporary worker for the employee on leave.

(4) An employer may apply for a grant no more than ten times per calendar year and no more than once for each employee on leave.

(5) To be eligible for a grant, the employer must provide the department written documentation showing the temporary worker hired or significant wage-related costs incurred are due to an employee's use of family or medical leave.

(6) The department must assess an employer with fewer than fifty employees who receives a grant under this section for all premiums for three years from the date of receipt of a grant.

(7) The grants under this section shall be funded from the family and medical leave insurance account.

(8) The commissioner shall adopt rules as necessary to implement this section.

(9) For the purposes of this section, the number of employees must be calculated as provided in RCW 50A.10.030.

(10) An employer who has an approved voluntary plan is not eligible to receive a grant under this section. [2019 c 13 § 36; 2017 3rd sp.s. c 5 § 84. Formerly RCW 50A.04.230.]

50A.24.020 Pandemic leave assistance employer grants—Eligibility. (Expires June 30, 2023.) (1) The legislature recognizes that costs associated with employees on leave who have received or will receive a pandemic leave assistance employee grant under RCW 50A.15.130 may disproportionately impact small businesses. Therefore, the legislature intends to assist small businesses with the costs of such employees on leave.

(2) Employers with 150 or fewer employees and employers with 50 or fewer employees who are assessed all premiums under RCW 50A.10.030(5)(b) may apply to the department for a pandemic leave assistance employer grant under this section.

(3)(a) An employer may receive a pandemic leave assistance employer grant of \$3,000 if the employer hires a temporary worker to replace an employee on leave who has received or will receive a pandemic leave assistance employee grant under RCW 50A.15.130.

(b) For an employee on leave who has received or will receive a pandemic leave assistance employee grant under RCW 50A.15.130, an employer may receive a grant of up to \$1,000 as reimbursement for significant wage-related costs due to the employee's leave.

(c) An employer may receive a grant under (a) or (b) of this subsection, but not both, except that an employer who received a grant under (b) of this subsection may receive a grant of the difference between the grant awarded under (b) of this subsection and \$3,000 if the employee on leave who has received or will receive a pandemic leave assistance grant under RCW 50A.15.130 extended the leave beyond the leave initially planned and the employer hired a temporary worker for the employee on leave.

(4) An employer may apply for a pandemic leave assistance employer grant no more than once.

(5) To be eligible for a pandemic leave assistance employer grant under this section, the employer must provide the department written documentation showing the temporary worker hired or significant wage-related costs incurred are due to an employee on leave who has received or will receive a pandemic leave assistance employee grant under RCW 50A.15.130.

(6) The department must assess an employer with fewer than 50 employees who receives a pandemic leave assistance employer grant under this section for all premiums for three years from the date of receipt of the grant.

(7) Pandemic leave assistance employer grants shall not be funded from the family and medical leave insurance account.

(8) For the purposes of this section, the number of employees must be calculated as provided in RCW 50A.10.030.

(9) An employer who has an approved voluntary plan is not eligible to receive a pandemic leave assistance employer grant under this section.

(10) Grants under this section are available only until funding provided by the legislature solely for these purposes is exhausted. [2021 c 109 § 3.]

Finding—Intent—Construction—Rule making—Expiration date—Effective date—2021 c 109: See notes following RCW 50A.15.130.

Chapter 50A.25 RCW PRIVACY

Sections

- 50A.25.010 Private and confidential information.
- 50A.25.020 Information concerning an individual or employer obtained pursuant to the administration of chapter 50A.25 RCW is private and confidential.
- 50A.25.030 Commissioner—Rule-making authority.
- 50A.25.040 Access to records and information—Individuals—Employers—Third parties.
- 50A.25.050 Access to information or records for use in a proceeding before the appeal tribunal or commissioner.
- 50A.25.060 Private and confidential information—When available to parties to judicial or formal administrative proceedings.
- 50A.25.070 Data-sharing contracts—When authorized—Disclosure to state or local government agencies.
- 50A.25.080 Access to information—Legislature.
- 50A.25.090 Disclosure to the federal internal revenue service.
- 50A.25.100 Application to RCW 42.56.070.
- 50A.25.110 Disclosure by the family and medical leave program of the department—When authorized.
- 50A.25.120 Obligation to prevent disclosure of information—Misuse or unauthorized disclosure.
- 50A.25.130 Disclosure of records acquired in the performance of the department's obligation—When authorized.
- 50A.25.140 Disclosure when all details identifying an individual or employee are deleted—When authorized.

50A.25.010 Private and confidential information. (1) If information provided to the department by another governmental agency is held private and confidential by state or federal law, the department may not release such information unless otherwise provided in this title.

(2) Information provided to the department by another governmental entity conditioned upon privacy and confidentiality under a provision of law is to be held private and confidential according to the agreement between the department and the other governmental agency unless otherwise provided in this title.

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

(4) Persons requesting disclosure of information held by the department under subsection (1) or (2) of this section shall request such disclosure from the agency providing the information to the department rather than from the department. [2019 c 13 § 70.]

50A.25.020 Information concerning an individual or employer obtained pursuant to the administration of chapter 50A.25 RCW is private and confidential. (1) Any information or records concerning an individual or employer obtained by the department pursuant to the administration of this title shall be private and confidential, except as otherwise provided in this chapter or RCW 50A.05.040.

(2) This chapter does not create a rule of evidence.

(3) The department must publish, on its website, a current list of all employers that have approved voluntary plans under chapter 50A.30 RCW. [2022 c 233 § 4; 2019 c 13 § 71.]

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50A.25.030 Commissioner—Rule-making authority. The commissioner has the authority to adopt, amend, or rescind rules interpreting and implementing this chapter. [2019 c 13 § 72.]

50A.25.040 Access to records and information—Individuals—Employers—Third parties. (1) An individual shall have access to all records and information concerning that individual held by the department unless the information is exempt from disclosure under RCW 42.56.410.

(2) An employer shall have access to:

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

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

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

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

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

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

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

(d) Indicating all the parties who may receive the information disclosed. [2019 c 13 § 73.]

50A.25.050 Access to information or records for use in a proceeding before the appeal tribunal or commissioner. (1) Any interested party, as defined by rule, in a proceeding before the appeal tribunal or commissioner shall have access to any information or records deemed private and confidential under this chapter if the information or records are material to the issues in that proceeding.

(2) No decision by the commissioner or the appeals tribunal shall be deemed private and confidential under this chapter unless the decision is based on information obtained in a closed hearing. [2019 c 13 § 74.]

50A.25.060 Private and confidential information—When available to parties to judicial or formal administrative proceedings. (1) Information or records deemed private and confidential under this chapter shall be available to parties to judicial or formal administrative proceedings only upon a written finding by the presiding officer that the need for the information or records in the proceeding outweighs any reasons for the privacy and confidentiality of the information or records.

(2) Information or records deemed private and confidential under this chapter shall not be available in discovery proceedings unless the court in which the action has been filed has made the finding in subsection (1) of this section. A judi-

cial or administrative subpoena directed to the department must contain this finding. A subpoena for records or information under this section must be submitted in a manner prescribed by the department. [2019 c 13 § 75.]

50A.25.070 Data-sharing contracts—When authorized—Disclosure to state or local government agencies.

(1) The department may enter into data-sharing contracts and may disclose records and information deemed confidential to state or local government agencies under this chapter only if permitted under subsection (2) of this section and RCW 50A.25.090. A state or local government agency must need the records or information for an official purpose and must also provide:

(a) An application in writing to the department for the records or information containing a statement of the official purposes for which the state or local government agency needs the information or records and specifically identify the records or information sought from the department; and

(b) A written verification of the need for the specific information from the director, commissioner, chief executive, or other official of the requesting state or local government agency either on the application or on a separate document.

(2) The department may disclose information or records deemed confidential under this chapter to the following state or local government agencies:

(a) To the department of social and health services to identify child support obligations as defined in RCW 50A.15.080 and for the purposes of administering the department's responsibilities under Title 50B RCW;

(b) To the department of revenue to determine potential tax liability or employer compliance with registration and licensing requirements;

(c) To the department of labor and industries to compare records or information to detect improper or fraudulent claims;

(d) To the office of financial management for the purpose of conducting periodic salary or fringe benefit studies pursuant to law or for the actuarial services created under chapter 233, Laws of 2022;

(e) To the office of the state treasurer and any financial or banking institutions deemed necessary by the office of the state treasurer and the department for the proper administration of funds;

(f) To the office of the attorney general for purposes of legal representation;

(g) To a county clerk for the purpose of RCW 9.94A.760 if requested by the county clerk's office;

(h) To the office of administrative hearings for the purpose of administering the administrative appeal process;

(i) To the department of enterprise services for the purpose of agency administration and operations;

(j) To the consolidated technology services agency for the purpose of enterprise technology support; and

(k) To the health care authority and the office of the state actuary for the purposes of administering the department's responsibilities under Title 50B RCW;

(l) To the office of the state actuary for the purpose of performing actuarial services to assess the financial stability and solvency of the family and medical leave program, and

specifically the family and medical leave insurance account created in RCW 50A.05.070; and

(m) To the joint legislative audit and review committee, in accordance with RCW 44.28.110, for the purpose of conducting performance audits.

(3) The department may also enter into data-sharing agreements with other state or local government agencies solely for the purposes of program evaluation under this title or Title 50B RCW. [2022 c 233 § 10; 2022 c 18 § 2; 2020 c 125 § 8; 2019 c 13 § 76.]

Reviser's note: This section was amended by 2022 c 18 § 2 and by 2022 c 233 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

50A.25.080 Access to information—Legislature. The state legislature may have access to information or records deemed private and confidential under this chapter if the following requirements are met:

(1) The legislature, a legislative committee, a legislator, or a staff member finds that the information or records are necessary and for official purposes; and

(2) The individuals and organizations whose information is contained within the confidential records requested must provide a signed disclosure that manifests the individual's or organization's informed consent to the disclosure of the records or information to the legislature, legislative committee, legislator, or staff member. [2019 c 13 § 77.]

50A.25.090 Disclosure to the federal internal revenue service. The department may disclose information or records deemed confidential under this chapter to the federal internal revenue service if the information is deemed necessary by the department to administer RCW 50A.15.070. [2019 c 13 § 78.]

50A.25.100 Application to RCW 42.56.070. Nothing in this chapter shall be construed as limiting or restricting the effect of RCW 42.56.070(8). [2019 c 13 § 79.]

50A.25.110 Disclosure by the family and medical leave program of the department—When authorized. The paid family and medical leave program of the department and the long-term services and supports trust administering agencies may disclose information or records deemed private and confidential under this chapter to any private person or organization, and by extension, the agents of any private person or organization, when the disclosure is necessary to permit private contracting parties to assist in the operation, management, and implementation of the program in instances where certain departmental functions may be delegated to private parties to increase the department's efficiency or quality of service to the public. The private person or organization shall use the information or records solely for the purpose for which the information was disclosed and shall be bound by the same rules of privacy and confidentiality as department employees. [2022 c 18 § 3; 2019 c 13 § 80.]

50A.25.120 Obligation to prevent disclosure of information—Misuse or unauthorized disclosure. (1) All private persons, government agencies, and organizations autho-

rized to receive information from the department under this chapter have an affirmative obligation to take all reasonable actions necessary to prevent the disclosure of confidential information.

(2) The disclosure of any records or information by a private person, government agency, or organization that obtained the records or information from the department under this chapter is prohibited unless expressly permitted by this chapter.

(3) If misuse or an unauthorized disclosure of confidential records or information occurs, all parties who are aware of the violation must inform the department immediately and must take all reasonably available actions to rectify the disclosure to the department's standards.

(4) The misuse or unauthorized release of records or information deemed private and confidential under this chapter by any private person, government agency, or organization to which access is permitted by this section shall subject the person, government agency, or organization to a civil penalty of up to twenty thousand dollars in 2018 and annually adjusted by the department based on changes in the United States consumer price index for all urban consumers. Other applicable sanctions under state and federal law also apply.

(5) Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the department's family and medical leave enforcement account. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section. [2019 c 13 § 81.]

50A.25.130 Disclosure of records acquired in the performance of the department's obligation—When authorized. Where the family and medical leave program of the department contracts to provide services to other governmental or private organizations, the department may disclose to those organizations information or records deemed private and confidential that have been acquired in the performance of the department's obligations under the contracts. [2019 c 13 § 82.]

50A.25.140 Disclosure when all details identifying an individual or employee are deleted—When authorized. Nothing in this chapter shall prevent the disclosure of information or records deemed private and confidential under this chapter if all details identifying an individual or employer are deleted so long as the information or records cannot be foreseeably combined with other publicly available information to reveal the identity of an individual or employer. [2019 c 13 § 83.]

Chapter 50A.30 RCW VOLUNTARY PLANS

Sections

50A.30.010	In general.
50A.30.015	Voluntary plans—Reapproval.
50A.30.020	Employee eligibility.
50A.30.030	Employees no longer covered.
50A.30.035	Voluntary plans—Posting of notice regarding plan.
50A.30.040	Employee costs.
50A.30.045	Voluntary plans—Remaining wage deductions upon withdrawal of plan.

50A.30.050	Voluntary plans—Employee contributions and income held in trust.
50A.30.055	Voluntary plans—Successor employer.
50A.30.060	Amendment.
50A.30.065	Voluntary plans—Termination by commissioner.
50A.30.070	Employer penalties.
50A.30.075	Appeals.
50A.30.080	Voluntary plans—Reports, information, and records.

50A.30.010 In general. (1) An employer may apply to the commissioner for approval of a voluntary plan for the payment of either family leave benefits or medical leave benefits, or both. The application must be submitted on a form and in the manner as prescribed by the commissioner in rule. The fee for the department's review of each application for approval of a voluntary plan is two hundred fifty dollars.

(2) The benefits payable as indemnification for loss of wages under any voluntary plan must be separately stated and designated separately and distinctly in the plan from other benefits, if any.

(3) Neither an employee nor his or her employer are liable for any premiums for benefits covered by an approved voluntary plan.

(4) An employee may only receive payment of benefits for family leave, medical leave, or both from one approved plan at a time. An employee who qualifies for benefits and is simultaneously covered by more than one plan under this title will receive benefits under the plan for which the employee has worked the most hours during the employee's qualifying period. The commissioner must adopt rules to allow benefits or prevent duplication of benefits to employees simultaneously covered by one or more approved voluntary plans and the state program.

(5) The commissioner must approve any voluntary plan as to which the commissioner finds that there is at least one employee in employment and all of the following exist:

(a) The benefits afforded to the employees must be at least equivalent to the benefits the employees are entitled to as part of the state's family and medical leave program, including but not limited to the duration of leave. The employer must offer at least one-half of the length of leave as provided in RCW 50A.15.020(3) with pay and provide a monetary payment in an amount equal to or higher than the total amount of monetary benefits the employee would be entitled to receive as part of the state-run program. The employer may offer the same duration of leave and monetary benefits as offered under the state program.

(b) The sick leave an employee is entitled to under RCW 49.46.210 is in addition to the employer's provided benefits and is in addition to any family or medical leave benefits.

(c) The plan is available to all of the eligible employees of the employer employed in this state, including future employees.

(d) The employer has agreed to make all required payroll deductions, including that:

(i) In the case of plan termination or withdrawal, the employer must remit to the department all required moneys under RCW 50A.30.045 and 50A.30.065(3); and

(ii) If the employer has an approved voluntary plan for either medical leave or family leave but not both, the employer is still obligated to remit to the department premiums owed to the state plan for the portions not covered by the employer's approved voluntary plan.

(e) The plan will be in effect for a period of not less than one year and, thereafter, continuously unless the commissioner finds that the employer has given notice of withdrawal from the plan in a manner specified by the commissioner in rule. The plan may be withdrawn by the employer on the date of any law increasing the benefit amounts or the date of any change in the rate of employee premiums, if notice of the withdrawal from the plan is transmitted to the commissioner not less than thirty days prior to the date of that law or change. If the plan is not withdrawn, it must be amended to conform to provide the increased benefit amount or change in the rate of the employee's premium on the date of the increase or change.

(f) The amount of payroll deductions from the wages of an employee in effect for any voluntary plan may not exceed the maximum payroll deduction for that employee as authorized under RCW 50A.10.030. The deductions may not be increased on other than an anniversary of the effective date of the plan, except to the extent that any increase in the deductions from the wages of an employee do not exceed the maximum rate authorized under the state program.

(g) The voluntary plan provides that an employee of an employer with a voluntary plan for either family leave or medical leave, or both, is eligible for the plan benefits if the employee meets the requirements of RCW 50A.15.010 and has worked at least three hundred forty hours for the employer during the twelve months immediately preceding the date leave will commence.

(h) The voluntary plan provides that an employee of an employer with a voluntary plan for either family leave or medical leave, or both, who takes leave under the voluntary plan is entitled to the employment protection provisions contained in RCW 50A.35.010 if the employee has worked for the employer for at least nine months and nine hundred sixty-five hours during the twelve months immediately preceding the date leave will commence.

(i) The voluntary plan provides that the employer maintains the employee's existing health benefits as provided under RCW 50A.35.020.

(6)(a) The department must conduct a review of the expenses incurred in association with the administration of the voluntary plans during the first three years after implementation and report its findings to the legislature.

(b) The review must include an analysis of the adequacy of the fee in subsection (1) of this section to cover the department's administrative expenses related to reviewing and approving or denying the applications and administering appeals related to voluntary plans. The review must include an estimate of the next year's projected administrative costs related to the voluntary plans. The legislature shall adjust the fee in subsection (1) of this section as needed to ensure the department's administrative expenses related to the voluntary plans are covered by the fee.

(c) If the current receipts from the fee in subsection (1) of this section are inadequate to cover the department's administrative expenses related to the voluntary plans, the department may use funds from the family and medical leave insurance account under RCW 50A.05.070 to pay for these expenses. [2020 c 125 § 9; 2019 c 13 § 56; 2018 c 141 § 7; 2017 3rd sp.s. c 5 § 14. Formerly RCW 50A.04.600.]

50A.30.015 Voluntary plans—Reapproval. The employer must have the voluntary plan approved by the commissioner annually for the first three years. After the first three years, the employer is only required to have the approval if the employer makes changes to the plan that were not mandated by changes to state law. [2017 3rd sp.s. c 5 § 16. Formerly RCW 50A.04.605.]

50A.30.020 Employee eligibility. (1) To be eligible for any family and medical leave, an employee must be in employment for eight hundred twenty hours during the qualifying period, by an employer with a voluntary plan or an employer utilizing the state family and medical leave plan. An employee qualifies for benefits under an employer's voluntary plan after the employee works at least three hundred forty hours for the current employer.

(2) An employer with an approved voluntary plan may waive the requirements in subsection (1) of this section, in whole or in part, to allow an employee to be immediately eligible for coverage under the employer's voluntary plan.

(3) An employee who had coverage under the state plan retains coverage under the state plan until such time as the employee is qualified for coverage under the new employer's voluntary plan.

(4) An employee who was eligible for benefits under a voluntary plan is immediately eligible for benefits under a new employer's voluntary plan. [2019 c 13 § 57; 2017 3rd sp.s. c 5 § 22. Formerly RCW 50A.04.610.]

50A.30.030 Employees no longer covered. (1) An employee is no longer covered by an approved voluntary plan if family leave or the employee's medical leave occurred after the employment relationship with the voluntary plan employer ends, or if the commissioner terminates a voluntary plan.

(2) An employee who has ceased to be covered by an approved voluntary plan is, if otherwise eligible, immediately entitled to benefits from the state program to the same extent as though there had been no exemption as provided in this title. [2019 c 13 § 58; 2017 3rd sp.s. c 5 § 23. Formerly RCW 50A.04.615.]

50A.30.035 Voluntary plans—Posting of notice regarding plan. An employer with a voluntary plan must provide a notice prepared by or approved by the commissioner regarding the voluntary plan consistent with the provisions of RCW 50A.20.020. [2020 c 125 § 10; 2017 3rd sp.s. c 5 § 25. Formerly RCW 50A.04.620.]

50A.30.040 Employee costs. An employer may assume all or a greater part of the cost of the voluntary plan than required under the state program. An employer may deduct from the wages of an employee covered by the voluntary plan, for the purpose of providing the benefits specified in this title, an amount not in excess of that which would be required if the employee was not covered by the plan. [2019 c 13 § 59; 2017 3rd sp.s. c 5 § 17. Formerly RCW 50A.04.625.]

50A.30.045 Voluntary plans—Remaining wage deductions upon withdrawal of plan. All deductions from

the wages of an employee remaining in the possession of the employer upon the employer's withdrawal of the voluntary plan as a result of plan contributions being in excess of plan costs, that are not disposed of in conformity with the department's rules, must be remitted to the department and deposited in the family and medical leave insurance account. [2017 3rd sp.s. c 5 § 18. Formerly RCW 50A.04.630.]

50A.30.050 Voluntary plans—Employee contributions and income held in trust. Any employee contributions to and income arising from an approved voluntary plan received or retained by an employer under an approved voluntary plan are trust funds that are not considered to be part of an employer's assets. An employer must maintain a separate, specifically identifiable account for voluntary plan trust funds in a financial institution. [2017 3rd sp.s. c 5 § 19. Formerly RCW 50A.04.635.]

50A.30.055 Voluntary plans—Successor employer. A voluntary plan in force and effect at the time a successor acquires the organization, trade, or business, or substantially all the assets thereof, or a distinct and severable portion of the organization, trade, or business, and continues its operation without substantial reduction of personnel resulting from the acquisition, must continue the voluntary plan and may not withdraw the plan without a specific request for withdrawal in a manner and at a time specified by the commissioner. A successor may terminate a voluntary plan with notice to the commissioner and without a request to withdraw the plan within ninety days from the date of the acquisition. [2017 3rd sp.s. c 5 § 15. Formerly RCW 50A.04.640.]

50A.30.060 Amendment. (1) The commissioner must approve any amendment to a voluntary plan adjusting the provisions thereof, as to periods after the effective date of the amendment, when the commissioner finds: (a) That the plan, as amended, will conform to the standards set forth in this title; and (b) that notice of the amendment has been delivered to the employees at least ten days prior to the approval.

(2) Nothing contained in this section is intended to deny or limit the right of the commissioner to adopt supplementary rules regarding voluntary plans. [2019 c 13 § 60; 2017 3rd sp.s. c 5 § 27. Formerly RCW 50A.04.645.]

50A.30.065 Voluntary plans—Termination by commissioner. (1) The commissioner may terminate any voluntary plan if the commissioner finds that there is risk that the benefits accrued or that will accrue will not be paid or for other good cause shown.

(2) The commissioner must give notice of the commissioner's intention to terminate a plan to the employer at least ten days before taking any final action. The notice must state the effective date and the reason for the termination.

(3) On the effective date of the termination of a plan by the commissioner, all moneys in the plan, including moneys paid by the employer, moneys paid by the employees, moneys owed to the voluntary plan by the employer but not yet paid to the plan, and any interest accrued on all these moneys, must be remitted to the department and deposited into the family and medical leave insurance account.

(4) The employer may, within ten days from mailing or personal service of the notice, file an appeal in the time, manner, method, and procedure provided in RCW 50A.50.010.

(5) The payment of benefits and the transfer of moneys in the voluntary plan may not be delayed during an employer's appeal of the termination of a voluntary plan.

(6) If an employer's voluntary plan has been terminated by the commissioner the employer is not eligible to apply for approval of another voluntary plan for a period of three years. [2019 c 13 § 61; 2017 3rd sp.s. c 5 § 21. Formerly RCW 50A.04.650.]

50A.30.070 Employer penalties. (1) An employer of a voluntary plan found to have violated this title shall be assessed the following monetary penalties:

(a) One thousand dollars for the first violation; and

(b) Two thousand dollars for the second and subsequent violations.

(2) The commissioner shall waive collection of the penalty if the employer corrects the violation within thirty days of receiving a notice of the violation and the notice is for a first violation.

(3) The commissioner may waive collection of any penalties if the commissioner determines the violation to be an inadvertent error by the employer.

(4) Monetary penalties collected under this section shall be deposited in the family and medical leave enforcement account.

(5) The department shall enforce the collection of penalties through conference and conciliation.

(6) These penalties may be appealed as provided in RCW 50A.50.010 through 50A.50.200. [2019 c 13 § 62; 2017 3rd sp.s. c 5 § 20. Formerly RCW 50A.04.655.]

50A.30.075 Appeals. An employer may appeal any adverse decision by the department related to voluntary plans. An employee may appeal any adverse decision by an employer or the employer's agent related to voluntary plans. Appeals are subject to RCW 50A.50.010. [2019 c 13 § 63; 2017 3rd sp.s. c 5 § 24. Formerly RCW 50A.04.660.]

50A.30.080 Voluntary plans—Reports, information, and records. Employers whose employees are participating in an approved voluntary plan must maintain all reports, information, and records as relating to the voluntary plan and claims for six years and furnish for the commissioner upon request. [2017 3rd sp.s. c 5 § 26. Formerly RCW 50A.04.665.]

Chapter 50A.35 RCW EMPLOYMENT PROTECTIONS

Sections

50A.35.010	Employment protection.
50A.35.020	Continuation of health benefits.
50A.35.030	Employer supplementation—Rights not subject to waiver or diminishment.

50A.35.010 Employment protection. (1) Except as provided in RCW 50A.30.010(5) and subsection (6) of this section, any employee who takes family or medical leave under this title is entitled, on return from the leave:

(a) To be restored by the employer to the position of employment held by the employee when the leave commenced; or

(b) To be restored by the employer to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) The taking of leave under this title may not result in the loss of any employment benefits accrued before the date on which the leave commenced.

(3) Nothing in this section shall be construed to entitle any restored employee to:

(a) The accrual of any seniority or employment benefits during any period of leave; or

(b) Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(4) As a condition of restoration under subsection (1) of this section for an employee who has taken medical leave, the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the employee's health care provider that the employee is able to resume work.

(5) Nothing in this section shall be construed to prohibit an employer from requiring an employee on leave to report periodically to the employer on the status and intention of the employee to return to work.

(6)(a) This section does not apply unless the employee: (i) Works for an employer with fifty or more employees; (ii) has been employed by the current employer for twelve months or more; and (iii) has worked for the current employer for at least one thousand two hundred fifty hours during the twelve months immediately preceding the date on which leave will commence. For the purposes of this subsection, an employer shall be considered to employ fifty or more employees if the employer employs fifty or more employees for each working day during each of twenty or more calendar workweeks in the current or preceding calendar year.

(b) An employer may deny restoration under this section to any salaried employee who is among the highest paid ten percent of the employees employed by the employer within seventy-five miles of the facility at which the employee is employed if:

(i) Denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;

(ii) The employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that the injury would occur; and

(iii) The leave has commenced and the employee elects not to return to employment after receiving the notice. [2019 c 13 § 4; 2017 3rd sp.s. c 5 § 31. Formerly RCW 50A.04.025.]

50A.35.020 Continuation of health benefits. If required by the federal family and medical leave act, as it existed on October 19, 2017, during any period of family or medical leave taken under this title, the employer shall maintain any existing health benefits of the employee in force for the duration of such leave as if the employee had continued to work from the date the employee commenced family or medical leave until the date the employee returns to employment.

If the employer and employee share the cost of the existing health benefits, the employee remains responsible for the employee's share of the cost. This section does not apply to an employee who is not in employment for an employer at the time of filing an application for benefits. [2019 c 13 § 39; 2017 3rd sp.s. c 5 § 70. Formerly RCW 50A.04.245.]

50A.35.030 Employer supplementation—Rights not subject to waiver or diminishment. (1) Nothing in this title shall be construed to discourage employers from:

(a) Adopting or retaining leave policies more generous than any policies that comply with the requirements under this title; or

(b) Making supplemental benefit payments as provided under RCW 50A.15.060 to an employee on paid family or medical leave.

(2) Any agreement by an individual to waive, release, or commute his or her rights under this title is void as against public policy.

(3) After January 1, 2020, subject to RCW 50A.05.090, an employee's rights under this title may not be diminished by a collective bargaining agreement or employer policy. [2019 c 13 § 42; 2017 3rd sp.s. c 5 § 78. Formerly RCW 50A.04.260.]

Chapter 50A.40 RCW UNLAWFUL ACTS

Sections

50A.40.010	Employers.
50A.40.020	Employee complaints—Commissioner investigation, determination.
50A.40.030	Damages.
50A.40.035	Damages—Liquidated damages—Collection.
50A.40.040	Damages—Recovery—Private right of action—Complaint withdrawal, resolution—Termination of department's administrative action.

50A.40.010 Employers. (1) It is unlawful for any employer to:

(a) Interfere with, restrain, or deny the exercise of, or the attempt to exercise, any valid right provided under this title; or

(b) Discharge or in any other manner discriminate against any employee for opposing any practice made unlawful by this title.

(2) It is unlawful for any person to discharge or in any other manner discriminate against any employee because the employee has:

(a) Filed any complaint, or has instituted or caused to be instituted any proceeding, under or related to this title;

(b) Given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this title; or

(c) Testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this title.

(3) As provided in RCW 50A.40.020 and 50A.40.030, the department will investigate allegations of unlawful acts and determine damages, as necessary. [2020 c 125 § 11; 2019 c 13 § 15; 2017 3rd sp.s. c 5 § 72. Formerly RCW 50A.04.085.]

50A.40.020 Employee complaints—Commissioner investigation, determination. (1) An employee who alleges one or more unlawful acts under RCW 50A.40.010 have occurred may file a complaint with the department. The department may not investigate any alleged violation of RCW 50A.40.010 that occurred more than three years before the date the employee filed the complaint.

(2) Upon receipt of a complaint under subsection (1) of this section, the commissioner shall investigate to determine if a violation occurred and the amount of any liquidated damages, unless the employee terminates the complaint under *RCW 50A.40.035.

(3) Upon completing an investigation, the commissioner shall issue a determination, unless the complaint is otherwise resolved upon agreement by all parties and in compliance with *RCW 50A.40.035(6) or withdrawn under *RCW 50A.40.035(5). If the department determines a violation occurred, the department may order the employer to pay liquidated damages under RCW 50A.40.030. [2020 c 125 § 12; 2019 c 13 § 17; 2017 3rd sp.s. c 5 § 73. Formerly RCW 50A.04.095.]

*Reviser's note: The reference to RCW 50A.40.035 appears to be erroneous. RCW 50A.40.040 was apparently intended.

50A.40.030 Damages. (1) Any employer who violates RCW 50A.40.010 is liable for damages.

(2) Damages are owed to the employee and must be paid by the employer to the employee directly.

(3)(a) Damages include:

(i) Any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or

(ii) In a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to wages or salary for the employee for up to sixteen weeks, or eighteen weeks if the employee experiences a serious health condition with a pregnancy that results in incapacity.

(b) Any employer who violates RCW 50A.40.010 is also liable for interest accrued on the damages assessed in this subsection.

(4) For a willful violation, the employer is also liable for an additional amount as liquidated damages equal to the sum of the amount described in subsection (3)(a) of this section and the interest described in subsection (3)(b) of this section. For purposes of this section, "willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute. All liquidated damages are owed to the employee and must be paid to the employee directly.

(5) Interest in this section is calculated at the prevailing rate. [2020 c 125 § 13; 2019 c 13 § 18; 2017 3rd sp.s. c 5 § 74. Formerly RCW 50A.04.100.]

50A.40.035 Damages—Liquidated damages—Collection. (1) If the department issues a determination under RCW 50A.40.020 that an employer owes liquidated damages, the employer must, within thirty calendar days, either pay all damages owed or file an appeal as provided in this title. Thereafter, all parties owed moneys may initiate collec-

tion action against the employer by filing a warrant with the clerk of any county within the state.

(a) The warrant may include all damages awarded to the employee plus reasonable attorneys' fees for the collection action, reasonable expert witness fees, and other reasonable costs of the action.

(b) For purposes of this section, thirty calendar days begins the day the determination is issued.

(2) The department is not responsible for collection action against an employer that has defaulted the payment of an award established under RCW 50A.40.030. [2020 c 125 § 16.]

50A.40.040 Damages—Recovery—Private right of action—Complaint withdrawal, resolution—Termination of department's administrative action. (1) A private action to recover damages under RCW 50A.40.030 may be brought against any employer by any one or more employees for and on behalf of:

(a) The employee or employees; or

(b) The employees and other employees similarly situated.

(2) Any action under subsection (1) of this section must be filed with a court of competent jurisdiction within the state. Any private action for an alleged violation of RCW 50A.40.010 must be commenced within three years of the date of the alleged violation.

(3) In an action under subsection (1) of this section the court shall, in addition to any judgment awarded to a prevailing plaintiff, award reasonable attorneys' fees, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(4) A private right of action is only available to an employee who either has not filed a complaint with the department, has withdrawn a filed complaint under subsection (5) of this section, or has resolved a complaint under subsection (6) of this section.

(5) An employee who has filed a complaint with the department under RCW 50A.40.020 may elect to withdraw the complaint by providing written notice to the department within ten business days after filing the complaint with the department. Withdrawing a complaint terminates the department's administrative action.

(6) A complaint may be resolved upon agreement by all parties. Resolution of a complaint must be communicated to the department prior to the department's issuance of a determination. Resolution of a complaint terminates the department's administrative action.

(7) In the event the department's administrative action is terminated under subsection (5) or (6) of this section:

(a) The department will immediately discontinue its investigation and any action against the employer; and

(b) The determination, if already issued, along with any related findings of fact and conclusions of law, and any payments or offers of payment made by the employer including interest, are not admissible in any court action or other judicial or administrative proceeding.

(8) Nothing in this section shall be construed to limit or affect:

(a) Except as provided in subsection (4) of this section, the right of any employee to pursue any judicial, administrative, or other action available with respect to an employer;

(b) The right of the department to pursue any judicial, administrative, or other action available with respect to an employee that is identified as a result of a complaint under RCW 50A.40.020; or

(c) The right of the department to pursue any judicial, administrative, or other action available with respect to an employer in the absence of a complaint. [2020 c 125 § 17.]

Chapter 50A.45 RCW

LIMITATIONS, DISQUALIFICATIONS, PENALTIES, AND INTEREST

Sections

50A.45.010	Employer penalties.
50A.45.015	Delinquency—Order and notice of assessment.
50A.45.020	Jeopardized collection—Immediate assessment.
50A.45.025	Delinquency—Accrual of interest.
50A.45.030	Collection by distraint, seizure, and sale.
50A.45.035	Collection by distraint, seizure, and sale—Procedure.
50A.45.040	Notice and order to withhold and deliver.
50A.45.045	Warrant for assessment.
50A.45.050	Liens.
50A.45.055	Liens—Insolvency, dissolution, or distribution of assets.
50A.45.060	Civil actions—Service of process.
50A.45.065	Injunction from continuing in business.
50A.45.070	Compromise of claims.
50A.45.075	Uncollectible accounts.

50A.45.010 Employer penalties. (1) An employer who willfully fails to make the required reports is subject to penalties as follows: (a) For the second occurrence, the penalty is seventy-five dollars; (b) for the third occurrence, the penalty is one hundred fifty dollars; and (c) for the fourth occurrence and for each occurrence thereafter, the penalty is two hundred fifty dollars.

(2) An employer who willfully fails to remit the full amount of the premiums when due is liable, in addition to the full amount of premiums due and amounts assessed as interest under RCW 50A.45.025, to a penalty equal to the premiums and interest.

(3) Any penalties under this section shall be deposited into the family and medical leave enforcement account.

(4) For the purposes of this section, "willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

(5) The department shall enforce the collection of penalties through conference and conciliation.

(6) These penalties may be appealed as provided in RCW 50A.50.010 through 50A.50.200. [2019 c 13 § 16; 2017 3rd sp.s. c 5 § 68. Formerly RCW 50A.04.090.]

50A.45.015 Delinquency—Order and notice of assessment. At any time after the commissioner shall find that any premiums, interest, or penalties have become delinquent, the commissioner may issue an order and notice of assessment specifying the amount due, which order and notice of assessment shall be served upon the delinquent employer in the manner prescribed for the service of a summons in a civil action, or using a method by which the mailing can be tracked or the delivery can be confirmed. Failure of the employer to receive such notice or order whether

served or mailed shall not release the employer from any tax, or any interest or penalties thereon. [2017 3rd sp.s. c 5 § 58. Formerly RCW 50A.04.130.]

50A.45.020 Jeopardized collection—Immediate assessment. If the commissioner has reason to believe that an employer is insolvent or if any reason exists why the collection of any premiums accrued will be jeopardized by delaying collection, he or she may make an immediate assessment thereof and may proceed to enforce collection immediately, but interest and penalties shall not begin to accrue upon any premiums until the date when such premiums would normally have become delinquent. [2017 3rd sp.s. c 5 § 59. Formerly RCW 50A.04.135.]

50A.45.025 Delinquency—Accrual of interest. If premiums are not paid on the date on which they are due and payable as prescribed by the commissioner, the whole or part thereof remaining unpaid shall bear interest at the rate of one percent per month or fraction thereof from and after such date until payment plus accrued interest is received by him or her. The date as of which payment of premiums, if mailed, is deemed to have been received may be determined by such regulations as the commissioner may prescribe. Interest collected pursuant to this section shall be paid into the family and medical leave enforcement account. Interest shall not accrue on premiums from any estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer qualifies as such, but premiums accruing with respect to employment of persons by any receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer shall become due and shall draw interest in the same manner as premiums due from other employers. Where adequate information has been furnished to the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, interest may be waived. [2017 3rd sp.s. c 5 § 55. Formerly RCW 50A.04.140.]

50A.45.030 Collection by distraint, seizure, and sale. If the amount of premiums, interest, or penalties assessed by the commissioner by order and notice of assessment provided in this title is not paid within ten days after the service or mailing of the order and notice of assessment, the commissioner or his or her duly authorized representative may collect the amount stated in said assessment by the distraint, seizure, and sale of the property, goods, chattels, and effects of said delinquent employer. There shall be exempt from distraint and sale under this section such goods and property as are exempt from execution under the laws of this state. [2019 c 13 § 24; 2017 3rd sp.s. c 5 § 60. Formerly RCW 50A.04.145.]

50A.45.035 Collection by distraint, seizure, and sale—Procedure. The commissioner, upon making a distraint, shall seize the property and shall make an inventory of the property distrained, a copy of which shall be mailed to the owner of such property or personally delivered to him or her,

and shall specify the time and place when said property shall be sold. A notice specifying the property to be sold and the time and place of sale shall be posted in at least two public places in the county wherein the seizure has been made. The time of sale shall be not less than ten nor more than twenty days from the date of posting of such notices. Said sale may be adjourned from time to time at the discretion of the commissioner, but not for a time to exceed in all sixty days. Said sale shall be conducted by the commissioner or his or her authorized representative who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the commissioner or his or her representative may declare such property to be purchased by the employment security department for such minimum price. In such event the delinquent account shall be credited with the amount for which the property has been sold. Property acquired by the employment security department as herein prescribed may be sold by the commissioner or his or her representative at public or private sale, and the amount realized shall be placed in the family and medical leave account. In all cases of sale, as aforesaid, the commissioner shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the commissioner to make such sale and conclusive evidence of the regularity of his or her proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the delinquent employer in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the employment security department, shall be first applied by the commissioner in satisfaction of the delinquent account, and out of any sum received in excess of the amount of delinquent premiums, interest, and penalties the administration fund shall be reimbursed for the costs of distraint and sale. Any excess which shall thereafter remain in the hands of the commissioner shall be refunded to the delinquent employer. Sums so refundable to a delinquent employer may be subject to seizure or distraint in the hands of the commissioner by any other taxing authority of the state or its political subdivisions. [2017 3rd sp.s. c 5 § 61. Formerly RCW 50A.04.150.]

50A.45.040 Notice and order to withhold and deliver.

The commissioner is hereby authorized to issue to any person, firm, corporation, political subdivision, or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when the commissioner has reason to believe that there is in the possession of such person, firm, corporation, political subdivision, or department, property which is due, owing, or belonging to any person, firm, or corporation upon whom the department has served a benefit overpayment assessment or a notice and order of assessment for premiums, interest, or penalties. The effect of a notice to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability is satisfied or becomes unenforceable because of a lapse of time. The notice and order to withhold and deliver shall be served by the sheriff or the sheriff's deputy of the county wherein the service is made, using a method by which the mailing can be tracked or the delivery can be confirmed,

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or by any duly authorized representative of the commissioner. Any person, firm, corporation, political subdivision, or department upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice. In the event there is in the possession of any such person, firm, corporation, political subdivision, or department, any property which may be subject to the claim of the employment security department of the state, such property shall be delivered forthwith to the commissioner or the commissioner's duly authorized representative upon demand to be held in trust by the commissioner for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability, or in the alternative, there shall be furnished a good and sufficient bond satisfactory to the commissioner conditioned upon final determination of liability. Should any person, firm, or corporation fail to make answer to an order to withhold and deliver within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against such person, firm, or corporation for the full amount claimed by the commissioner in the notice to withhold and deliver, together with costs. [2017 3rd sp.s. c 5 § 62. Formerly RCW 50A.04.155.]

50A.45.045 Warrant for assessment. Whenever any order and notice of assessment or jeopardy assessment has become final in accordance with the provisions of this title the commissioner may file with the clerk of any county within the state a warrant in the amount of the notice of assessment plus interest, penalties, and a filing fee under RCW 36.18.012(10). The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of the tax, interest, penalties, and filing fee and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant, and charged by the commissioner to the employer. A copy of the warrant shall be mailed to the employer using a method by which the mailing can be tracked or the delivery can be confirmed within five days of filing with the clerk. [2019 c 13 § 25; 2017 3rd sp.s. c 5 § 63. Formerly RCW 50A.04.160.]

50A.45.050 Liens. The claim of the employment security department for any premiums, interest, or penalties not paid when due, shall be a lien prior to all other liens or claims and on a parity with prior tax liens against all property and rights to property, whether real or personal, belonging to the

employer. In order to avail itself of the lien hereby created, the department shall file with any county auditor where property of the employer is located a statement and claim of lien specifying the amount of delinquent premiums, interest, and penalties claimed by the department. From the time of filing for record, the amount required to be paid shall constitute a lien upon all property and rights to property, whether real or personal, in the county, owned by the employer or acquired by him or her. The lien shall not be valid against any purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor until notice thereof has been filed with the county auditor. This lien shall be separate and apart from, and in addition to, any other lien or claim created by, or provided for in, this title. When any such notice of lien has been so filed, the commissioner may release the same by filing a certificate of release when it shall appear that the amount of delinquent premiums, interest, and penalties have been paid, or when such assurance of payment shall be made as the commissioner may deem to be adequate. Fees for filing and releasing the lien provided herein may be charged to the employer and may be collected from the employer utilizing the remedies provided in this title for the collection of premiums. [2019 c 13 § 26; 2017 3rd sp.s. c 5 § 56. Formerly RCW 50A.04.165.]

50A.45.055 Liens—Insolvency, dissolution, or distribution of assets. In the event of any distribution of an employer's assets pursuant to an order of any court, including any receivership, probate, legal dissolution, or similar proceeding, or in case of any assignment for the benefit of creditors, composition, or similar proceeding, premiums, interest, or penalties then or thereafter due shall be a lien upon all the assets of such employer. Said lien is prior to all other liens or claims except prior tax liens, other liens provided by this title, and claims for remuneration for services of not more than two hundred fifty dollars to each claimant earned within six months of the commencement of the proceeding. The mere existence of a condition of insolvency or the institution of any judicial proceeding for legal dissolution or of any proceeding for distribution of assets shall cause such a lien to attach without action on behalf of the commissioner or the state. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended, premiums, interest, or penalties then or thereafter due shall be entitled to such priority as provided in that act, as amended. [2019 c 13 § 27; 2017 3rd sp.s. c 5 § 57. Formerly RCW 50A.04.170.]

50A.45.060 Civil actions—Service of process. (1) If after due notice, any employer defaults in any payment of premiums, interest, or penalties, the amount due may be collected by civil action in the name of the state, and the employer adjudged in default shall pay the cost of such action. Any lien created by this title may be foreclosed by decree of the court in any such action. Civil actions brought under this title to collect premiums, interest, or penalties from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this title, cases arising under the unem-

ployment compensation laws of this state, and cases arising under the industrial insurance laws of this state.

(2) Any employer that is not a resident of this state and that exercises the privilege of having one or more individuals perform service for it within this state, and any resident employer that exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of process in any action under this title. In instituting such an action against any such employer the commissioner shall cause such process or notice to be filed with the secretary of state and such service shall be sufficient service upon such employer, and shall be of the same force and validity as if served upon it personally within this state: PROVIDED, That the commissioner shall forthwith send notice of the service of such process or notice, together with a copy thereof, by registered mail, return receipt requested, to such employer at its last known address and such return receipt, the commissioner's affidavit of compliance with the provisions of this section, and a copy of the notice of service shall be appended to the original of the process filed in the court in which such action is pending. [2019 c 13 § 28; 2017 3rd sp.s. c 5 § 64. Formerly RCW 50A.04.175.]

50A.45.065 Injunction from continuing in business. Any employer who is delinquent in the payment of premiums, interest, or penalties may be enjoined upon the suit of the state of Washington from continuing in business in this state or employing persons herein until the delinquent premiums, interest, and penalties have been paid, or until the employer has furnished a good and sufficient bond in a sum equal to double the amount of premiums, interest, and penalties already delinquent, plus such further sum as the court deems adequate to protect the department in the collection of premiums, interest, and penalties which will become due from such employer during the next ensuing calendar year, said bond to be conditioned upon payment of all premiums, interest, and penalties due and owing within thirty days after the expiration of the next ensuing calendar year or at such earlier date as the court may fix. Action under this section may be instituted in the superior court of any county of the state wherein the employer resides, has its principal place of business, or where it has anyone performing services for it, whether or not such services constitute employment. [2017 3rd sp.s. c 5 § 65. Formerly RCW 50A.04.180.]

50A.45.070 Compromise of claims. The commissioner may compromise any claim for premiums, interest, or penalties due and owing from an employer, and any amount owed by an individual because of benefit overpayments existing or arising under this title in any case where collection of the full amount due and owing, whether reduced to judgment or otherwise, would be against equity and good conscience. Whenever a compromise is made by the commissioner in the case of a claim for premiums, interest, or penalties, whether reduced to judgment or otherwise, there shall be placed on file in the department a statement of the amount of premiums, interest, and penalties imposed by law and claimed due, attorneys' fees and costs, if any, a complete record of the compromise agreement, and the amount actually paid in accordance with the terms of the compromise

agreement. Whenever a compromise is made by the commissioner in the case of a claim of a benefit overpayment, whether reduced to judgment or otherwise, there shall be placed on file in the department a statement of the amount of the benefit overpayment, attorneys' fees and costs, if any, a complete record of the compromise agreement, and the amount actually paid in accordance with the terms of the compromise agreement. If any such compromise is accepted by the commissioner, within such time as may be stated in the compromise or agreed to, such compromise shall be final and conclusive and except upon showing of fraud or malfeasance or misrepresentation of a material fact the case shall not be reopened as to the matters agreed upon. In any suit, action, or proceeding, such agreement or any determination, collection, payment, adjustment, refund, or credit made in accordance therewith shall not be annulled, modified, set aside, or disregarded. [2019 c 13 § 29; 2017 3rd sp.s. c 5 § 54. Formerly RCW 50A.04.185.]

50A.45.075 Uncollectible accounts. The commissioner may charge off as uncollectible and no longer an asset of the family and medical leave account, any delinquent premiums, interest, penalties, credits, or benefit overpayments if the commissioner is satisfied that there are no cost-effective means of collecting the premiums, interest, penalties, credits, or benefit overpayments. [2017 3rd sp.s. c 5 § 66. Formerly RCW 50A.04.190.]

Chapter 50A.50 RCW APPEALS

Sections

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50A.50.010 Generally. (1) Any aggrieved party may file an appeal from any determination or redetermination with the commissioner within thirty days after the date of notification or mailing, whichever is earlier, of such determination or redetermination to the party's last known address. If an appeal with respect to any determination is pending as of the date when a redetermination is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

(2) Any appeal from a determination of denial of benefits shall be deemed to be an appeal as to all weeks subsequent to the effective date of the denial for which benefits have already been denied. If no appeal is taken from any determi-

nation, or redetermination, within the time allowed by the provisions of this section for appeal, the determination or redetermination, as the case may be, shall be conclusively deemed to be correct except as provided in respect to reconsideration by the commissioner of any determination.

(3) Upon receipt of a notice of appeal, the commissioner shall request the assignment of an administrative law judge under chapter 34.12 RCW to conduct a hearing in accordance with chapter 34.05 RCW and issue a proposed order. [2020 c 125 § 14; 2018 c 141 § 3; 2017 3rd sp.s. c 5 § 34. Formerly RCW 50A.04.500.]

50A.50.020 Assessments. (1) When an order and notice of assessment has been served upon or mailed to a delinquent employer, the employer may within thirty days file an appeal with the department, stating that the assessment is unjust or incorrect and requesting a hearing. The appeal must set forth the reasons why the assessment is objected to and the amount of premiums, if any, which the employer admits to be due. If no appeal is filed, the assessment shall be conclusively deemed to be just and correct except that in such case, and in cases where payment of premiums, interest, or penalties has been made pursuant to a jeopardy assessment, the commissioner may properly entertain a subsequent application for refund. The filing of an appeal on a disputed assessment with the administrative law judge stays the distraint and sale proceeding provided for in this title until a final decision has been made, but the filing of an appeal shall not affect the right of the commissioner to perfect a lien, as provided by this title, upon the property of the employer. The filing of a petition on a disputed assessment stays the accrual of interest and penalties on the disputed premiums until a final decision is made.

(2) Within thirty days after notice of denial of refund or adjustment has been mailed or delivered, whichever is the earlier, to an employer, the employer may file an appeal with the department for a hearing unless assessments have been appealed from and have become final. The employer shall set forth the reasons why such hearing should be granted and the amount which the employer believes should be adjusted or refunded. If no appeal is filed within said thirty days, the determination of the commissioner as stated in the notice shall be final. [2019 c 13 § 44; 2017 3rd sp.s. c 5 § 36. Formerly RCW 50A.04.505.]

50A.50.030 Benefit redeterminations. (1) A determination of amount of benefits potentially payable under this title is not a basis for appeal. However, the determination is subject to request by the employee on family and medical leave for redetermination by the commissioner at any time within one year from the date of delivery or mailing of such determination, or any redetermination thereof. A redetermination shall be furnished to the employee in writing and provide the basis for appeal.

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

(3) A determination of allowance of benefits becomes final, in the absence of a timely appeal therefrom. The com-

missioner may redetermine such allowance at any time within two years following the eligibility period in which such allowance was made in order to recover any benefits for which recovery is provided under this title.

(4) A redetermination may be made at any time: (a) To conform to a final court decision applicable to either an initial determination or a determination of denial or allowance of benefits; (b) in the event of a back pay award or settlement affecting the allowance of benefits; or (c) in the case of misrepresentation or willful failure to report a material fact. Written notice of any such redetermination shall be promptly given by mail or delivered to such interested parties as were notified of the initial determination or determination of denial or allowance of benefits and any new interested party or parties who, pursuant to such rule as the commissioner may adopt, would be an interested party. [2019 c 13 § 45; 2017 3rd sp.s. c 5 § 53. Formerly RCW 50A.04.510.]

50A.50.040 When deemed filed and received. The appeal or petition from a determination, redetermination, order and notice of assessment, appeals decision, or commissioner's decision is deemed filed and received if properly addressed and with sufficient postage:

(1) If transmitted through the United States mail, on the date shown by the United States postal service cancellation mark;

(2) If mailed but not received by the addressee, or where received and the United States postal service cancellation mark is illegible, erroneous, or omitted, on the date it was mailed, if the sender establishes by competent evidence that the appeal or petition was deposited in the United States mail on or before the date due for filing; or

(3) In the case of a metered cancellation mark by the sender and a United States postal service cancellation mark on the same envelope or other wrapper, the latter shall control. [2017 3rd sp.s. c 5 § 35. Formerly RCW 50A.04.515.]

50A.50.050 Assessments—Procedure. In any proceeding before an administrative law judge involving an appeal from a disputed order and notice of assessment or a disputed denial of refund or adjustment, the administrative law judge, after affording the parties a reasonable opportunity for hearing, shall affirm, modify, or set aside the notice of assessment or denial of refund. The parties shall be duly notified of such decision together with the reasons, which shall be deemed to be the final decision unless within thirty days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to the provisions of this title relating to review by the commissioner. [2019 c 13 § 46; 2017 3rd sp.s. c 5 § 38. Formerly RCW 50A.04.520.]

50A.50.060 Benefits—Procedure. (1) In any proceeding before an administrative law judge involving a dispute of an employee's initial determination, claim for waiting period credit or claim for benefits, all matters and provisions of this title relating to the employee's initial determination, or right to receive such credit or benefits for the period in question, shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal in single employee cases.

(2) In any proceeding before an administrative law judge involving an employee's right to benefits, all parties shall be afforded an opportunity for hearing after not less than seven days' notice in accordance with RCW 34.05.434.

(3) In any proceeding involving an appeal relating to benefit determinations or benefit claims, the administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall render its decision affirming, modifying, or setting aside the determination or decisions of the department. The parties shall be duly notified of such decision together with the reasons, which shall be deemed to be the final decision unless, within thirty days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to RCW 50A.50.080. [2019 c 13 § 47; 2018 c 141 § 4; 2017 3rd sp.s. c 5 § 37. Formerly RCW 50A.04.525.]

50A.50.070 Hearing procedures. The manner in which any dispute is presented to the administrative law judge, and the conduct of hearings and appeals, shall be in accordance with rules adopted by the commissioner. A full and complete record shall be kept of all administrative law judge proceedings. All testimony at any appeal hearing shall be recorded, but need not be transcribed unless further appeal is taken. [2017 3rd sp.s. c 5 § 39. Formerly RCW 50A.04.530.]

50A.50.080 Commissioner review—Initiation. Within thirty days from the date of notification or mailing, whichever is the earlier, of any decision of an administrative law judge, the commissioner on the commissioner's own order may, or upon petition of any interested party shall, take jurisdiction of the proceedings for the purpose of review. Appeal from any decision of an administrative law judge may be perfected so as to prevent finality of such decision if, within thirty days from the date of notification or mailing of the decision, whichever is the earlier, a petition in writing for review by the commissioner is received by the commissioner or by such representative of the commissioner as the commissioner by rule shall prescribe. The commissioner may also prevent finality of any decision of an administrative law judge and take jurisdiction of the proceedings for his or her review by entering an order so providing on his or her own motion and mailing a copy thereof to the interested parties within the same period allowed for receipt of a petition for review. The time limit provided for the commissioner's assumption of jurisdiction on his or her own motion for review shall be deemed to be jurisdictional. [2017 3rd sp.s. c 5 § 40. Formerly RCW 50A.04.535.]

50A.50.090 Commissioner review—Procedure. After having acquired jurisdiction for review, the commissioner shall review the proceedings in question. Prior to rendering a decision, the commissioner may order the taking of additional evidence by an administrative law judge to be made a part of the record in the case. Upon the basis of evidence submitted to the administrative law judge and such additional evidence as the commissioner may order to be taken, the commissioner shall render a decision in writing affirming, modifying, or setting aside the decision of the administrative law judge. Alternatively, the commissioner may order further

proceedings to be held before the administrative law judge, upon completion of which the administrative law judge shall issue a new decision in writing affirming, modifying, or setting aside the previous decision of the administrative law judge. The new decision of the administrative law judge may be appealed as provided under RCW 50A.50.080. The commissioner shall mail the decision of the commissioner to the interested parties at their last known addresses. [2019 c 13 § 48; 2018 c 141 § 5; 2017 3rd sp.s. c 5 § 42. Formerly RCW 50A.04.540.]

50A.50.100 Commissioner review—When final—Commissioner as party. Any decision of the commissioner involving a review of an administrative law judge decision, in the absence of a petition as provided in chapter 34.05 RCW, becomes final thirty days after notification or mailing, whichever is earlier. The commissioner shall be deemed to be a party to any judicial action involving any such decision and shall be represented in any such judicial action by the attorney general. [2017 3rd sp.s. c 5 § 43. Formerly RCW 50A.04.545.]

50A.50.110 Applicability of findings, determinations, etc. to other actions. Any finding, determination, conclusion, declaration, or final order made by the commissioner, or his or her representative or delegate, or by an appeal tribunal, administrative law judge, reviewing officer, or other agent of the department for the purposes of this title, shall not be conclusive, nor binding, nor admissible as evidence in any separate action outside the scope of this title between an employee and the employee's present or prior employer before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts or was reviewed pursuant to RCW 50A.50.140. [2019 c 13 § 49; 2017 3rd sp.s. c 5 § 48. Formerly RCW 50A.04.550.]

50A.50.120 Waiver of time limitations. For good cause shown the administrative law judge or the commissioner may waive the time limitations for administrative appeals or petitions set forth in this title. [2019 c 13 § 50; 2017 3rd sp.s. c 5 § 41. Formerly RCW 50A.04.555.]

50A.50.130 Judicial review. (1) In all court proceedings under or pursuant to this title the decision of the commissioner shall be prima facie correct, and the burden of proof shall be upon the party attacking the decision.

(2) If the court determines that the commissioner has acted within the commissioner's power and has correctly construed the law, the decision of the commissioner shall be confirmed; otherwise, the decision shall be reversed or modified. In case of a modification or reversal the superior court shall refer the decision to the commissioner with an order directing the commissioner to proceed in accordance with the findings of the court.

(3) Whenever any order and notice of assessment shall have become final in accordance with the provisions of this title, the court shall upon application of the commissioner enter a judgment in the amount provided for in the order and notice of assessment, and the judgment shall have and be given the same effect as if entered pursuant to a civil action

instituted in the court. [2019 c 13 § 51; 2017 3rd sp.s. c 5 § 47. Formerly RCW 50A.04.560.]

50A.50.140 Judicial review—Procedure. Judicial review of a decision of the commissioner involving the review of a decision of an administrative law judge under this title may be had only in accordance with the procedural requirements of RCW 34.05.452. [2019 c 13 § 52; 2018 c 141 § 6; 2017 3rd sp.s. c 5 § 44. Formerly RCW 50A.04.565.]

50A.50.150 Judicial review—Bond—Stay. (1) A bond of any kind shall not be required of any employee seeking judicial review from a commissioner's decision affecting such employee's application for initial determination or claim for waiting period credit or for benefits.

(2) A commissioner's decision shall not be stayed by a petition for judicial review unless the petitioning employer shall first deposit an undertaking in an amount deemed by the commissioner to be due, if any, from the petitioning employer, together with interest thereon, if any, with the commissioner or in the registry of the court.

(3) This section does not authorize a stay in the payment of benefits to an employee when such employee has been held entitled thereto by a decision of the commissioner which decision either affirms, reverses, or modifies a decision of an appeals tribunal. [2017 3rd sp.s. c 5 § 45. Formerly RCW 50A.04.570.]

50A.50.160 Judicial review—Interstate petitions. RCW 34.05.514 to the contrary notwithstanding, petitions to the superior court from decisions of the commissioner dealing with the applications or claims relating to benefit payments that were filed outside of this state with an authorized representative of the commissioner shall be filed with the superior court of Thurston county that shall have the original venue of such appeals. [2017 3rd sp.s. c 5 § 46. Formerly RCW 50A.04.575.]

50A.50.170 Fees. An individual shall not be charged fees of any kind in any proceeding involving the employee's application for initial determination, or claim for waiting period credit, or claim for benefits, under this title by the commissioner or his or her representatives, or by an appeal tribunal, or any court, or any officer thereof. Any employee in any such proceeding before the commissioner or any appeal tribunal may be represented by counsel or other duly authorized agent who shall neither charge nor receive a fee for such services in excess of an amount found reasonable by the officer conducting such proceeding. [2019 c 13 § 53; 2017 3rd sp.s. c 5 § 49. Formerly RCW 50A.04.580.]

50A.50.180 Attorneys' fees—Court. It shall be unlawful for any attorney engaged in any appeal to the courts on behalf of an employee involving the employee's application for initial determination or claim for benefits to charge or receive any fee in excess of a reasonable fee to be fixed by the superior court in respect to the services performed in connection with the appeal taken and to be fixed by the supreme court or the court of appeals in the event of appellate review, and if the decision of the commissioner shall be reversed or modified, such fee and the costs shall be payable out of the

family and medical leave enforcement account. [2017 3rd sp.s. c 5 § 50. Formerly RCW 50A.04.585.]

50A.50.190 Commissioner's expenses. (1) Whenever any appeal is taken from any decision of the commissioner to any court, all expenses and costs incurred by the commissioner, including court reporter costs and attorneys' fees and all costs taxed against such commissioner, shall be paid out of the family and medical leave enforcement account.

(2) Neither the commissioner nor the state shall be charged any fee for any service rendered in connection with litigation under this title by the clerk of any court. [2019 c 13 § 54; 2017 3rd sp.s. c 5 § 52. Formerly RCW 50A.04.590.]

50A.50.200 Remedies exclusive. The remedies provided in this title for determining the justness or correctness of assessments, refunds, adjustments, or claims shall be exclusive and no court shall entertain any action to enjoin an assessment or require a refund or adjustment except in accordance with the provisions of this title. Matters which may be determined by the procedures set out in this title shall not be the subject of any declaratory judgment. [2019 c 13 § 55; 2017 3rd sp.s. c 5 § 51. Formerly RCW 50A.04.595.]