
HOUSE BILL 1457

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Green, Sawyer, Reykdal, Appleton, Sells, Ormsby, Bergquist, Jenkins, Pollet, Fey, and Moeller

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

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

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

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

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

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

15 The definitions in this section apply throughout this chapter
16 unless the context clearly requires otherwise.

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

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

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

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

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

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

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

1 ~~(5) "Director" means the director of the~~) employment security
2 department.

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

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

6 (8) "Family and medical leave" means ~~leave((:—(a) Because of the~~
7 ~~birth of a child of the employee and in order to care for the child; or~~
8 ~~(b) because of the placement of a child with the employee for~~
9 ~~adoption))~~ for a family member's serious health condition, leave for
10 the birth or placement of a child, and leave for the individual's
11 serious health condition as these types of leave are defined in RCW
12 49.78.020 and described in RCW 49.78.220.

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

15 (10) "Family member" means a child, spouse, domestic partner, or
16 parent of the individual, or pursuant to section 13 of this act, a
17 designated person.

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

21 ~~((11))~~ (12) "Premium" or "premiums" means payments required by
22 this chapter to be made to the department for the family and medical
23 leave insurance account under RCW 49.86.170.

24 (13) "Qualifying year" means the first four of the last five
25 completed calendar quarters or, if eligibility is not established, the
26 last four completed calendar quarters immediately preceding the first
27 day of the individual's application year.

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

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

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

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

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

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

6 (2) The department shall establish procedures and forms for filing
7 claims for benefits under this chapter. The department shall notify
8 the employer within five business days of a claim being filed under RCW
9 49.86.030.

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

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

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

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

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

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

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

1 such persons are rendering assistance to the department at any stage of
2 the proceedings on any matter pertaining to the administration of this
3 chapter.

4 ~~((+5))~~ (7) The department shall develop and implement an outreach
5 program to ensure that individuals who may be eligible to receive
6 family and medical leave insurance benefits under this chapter are made
7 aware of these benefits. Outreach information shall explain, in an
8 easy to understand format, eligibility requirements, the claims
9 process, weekly benefit amounts, maximum benefits payable, notice and
10 medical certification requirements, reinstatement and nondiscrimination
11 rights, confidentiality, and ~~((coordination of leave))~~ the relationship
12 between employment protection, leave from employment, and wage
13 replacement benefits under this chapter and other laws, collective
14 bargaining agreements, and employer policies. Outreach information
15 shall be prepared by the department with technical assistance from the
16 department of labor and industries. Outreach information shall be
17 available in English and other primary languages as defined in RCW
18 74.04.025.

19 **Sec. 5.** RCW 49.86.030 and 2011 1st sp.s. c 25 s 1 are each amended
20 to read as follows:

21 (1) Beginning October 1, 2015, family and medical leave insurance
22 benefits are payable to an individual during a period in which the
23 individual is unable to perform his or her regular or customary work
24 because he or she is on family and medical leave if the individual:

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

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

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

33 ~~((+4))~~ (d) Consents to the disclosure of information or records
34 deemed private and confidential under ~~((chapter 50.13 RCW))~~ state law.
35 Initial disclosure of this information and these records by ~~((the~~
36 ~~employment security department))~~ another state agency to the department

1 is solely for purposes related to the administration of this chapter.
2 Further disclosure of this information or these records is subject to
3 RCW 49.86.020(~~(+3+)~~) (5) and section 16 of this act;

4 (~~(+5+)~~) (e) Discloses whether or not he or she owes child support
5 obligations as defined in RCW 50.40.050; (~~and~~

6 ~~(6) Documents that he or she has provided)~~ (f) Provides the
7 employer from whom family and medical leave is to be taken with written
8 notice of the individual's intention to take family and medical leave
9 in the same manner as an employee is required to provide notice in RCW
10 49.78.250 and, in the individual's claim for benefits, attests that
11 written notice has been provided; and

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

16 (2)(a) With respect to leave for the birth or placement of a child
17 or a family member's serious health condition, family and medical leave
18 insurance benefits are payable beginning October 1, 2015.

19 (b) With respect to leave for an individual's serious health
20 condition, family and medical leave insurance benefits are payable
21 beginning October 1, 2016.

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

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

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

32 (1) The maximum number of weeks during which family and medical
33 leave insurance benefits are payable in an application year is (~~five~~
34 weeks)) twelve weeks for leave for a family member's serious health
35 condition and for the birth or placement of a child, plus twelve weeks
36 for the individual's serious health condition. However, benefits are

1 not payable during a waiting period consisting of the first seven
2 calendar days of family and medical leave taken in an application year
3 with respect to a particular type of family and medical leave, whether
4 the first seven calendar days of family and medical leave are employer
5 paid or unpaid.

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

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

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

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

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

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

36 (2) (~~If an individual who at the time of beginning family leave~~
37 ~~was regularly working thirty five hours or more per week is on family~~

1 ~~leave for less than thirty five hours but at least eight hours in a~~
2 ~~week, the individual's weekly benefit shall be .025 times the maximum~~
3 ~~weekly benefit times the number of hours of family leave taken in the~~
4 ~~week.)) Beginning October 1, 2015, the maximum weekly benefit amount
5 shall be one thousand dollars. By September 30, 2015, and by each
6 subsequent September 30th, the department shall calculate to the
7 nearest dollar adjusted maximum weekly benefit amounts to account for
8 inflation using the consumer price index for urban wage earners and
9 clerical workers, CPI-W, or a successor index, for the twelve completed
10 calendar months before each September 30th as calculated by the United
11 States department of labor. The adjusted maximum weekly benefit
12 amounts calculated under this subsection take effect on the following
13 January 1st.~~

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

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

23 (4) If an individual discloses that he or she owes child support
24 obligations under RCW 49.86.030 and the department determines that the
25 individual is eligible for benefits, the department shall notify the
26 applicable state or local child support enforcement agency and deduct
27 and withhold an amount from benefits in a manner consistent with RCW
28 50.40.050.

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

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

37 ~~((1))~~ If the internal revenue service determines that family and

1 medical leave insurance benefits under this chapter are subject to
2 federal income tax, the department must advise an individual filing a
3 new claim for family and medical leave insurance benefits, at the time
4 of filing such claim, that((+

5 (a)) the internal revenue service has determined that benefits are
6 subject to federal income tax((+

7 (b)) and requirements exist pertaining to estimated tax
8 payments((+

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

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

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

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

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

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

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

1 (a) The clerk of the county where the warrant is filed shall
2 immediately designate a superior court cause number for the warrant.
3 The clerk shall cause to be entered in the judgment docket under the
4 superior court cause number assigned to the warrant the name of the
5 person or persons mentioned in the warrant, the amount of the
6 overpayment assessment, and the date when the warrant was filed.

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

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

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

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

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

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

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

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

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

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

5 If spouses or (~~people involved in a legal relationship established~~
6 ~~under chapter 26.60 RCW who are~~) domestic partners entitled to leave
7 under this chapter are employed by the same employer, the employer may
8 require that spouses or (~~people involved in such a relationship~~
9 ~~governed by Title 26 RCW~~) domestic partners not take such leave
10 concurrently if such leave is taken: (1) For the birth or placement of
11 a child; or (2) for a parent's serious health condition.

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

14 If an individual does not have a spouse or domestic partner, the
15 individual may designate one person for whom the employee will care if
16 the designated person has a serious health condition. An employer may
17 establish a process for an individual to make such a designation within
18 thirty days of the individual's date of hire. Thereafter, the employer
19 must permit the individual to make or change such a designation, as
20 applicable, on an annual basis. If an individual's employer
21 establishes such a process, the individual must make such a designation
22 using the employer's process. If an individual's employer does not
23 establish such a process, the individual may make such a designation
24 when filing a claim for benefits.

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

27 (1) Beginning January 1, 2015, an employer of individuals not
28 covered by this chapter or a self-employed person, including a sole
29 proprietor, partner, or joint venturer, may elect coverage under this
30 chapter for all individuals in its employ for an initial period of not
31 less than three years or a subsequent period of not less than one year
32 immediately following another period of coverage. The employer or
33 self-employed person must file a notice of election in writing with the
34 (~~director~~) commissioner, as required by the department. The election

1 becomes effective on the date of filing the notice with the
2 commissioner.

3 (2) An employer or self-employed person who has elected coverage
4 may withdraw from coverage within thirty days after the end of the
5 three-year period of coverage, or at such other times as the
6 ~~((director))~~ commissioner may ~~((prescribe))~~ adopt by rule, by filing
7 ~~((written))~~ a notice of withdrawal in writing with the ~~((director))~~
8 commissioner, such withdrawal to take effect not sooner than thirty
9 days after filing the notice with the commissioner. Within five days
10 of filing written notice of the withdrawal with the ~~((director))~~
11 commissioner, an employer must provide written notice of the withdrawal
12 to all individuals in the employer's employ.

13 (3) The department may cancel elective coverage if the employer or
14 self-employed person fails to make required payments or reports. The
15 department may collect due and unpaid premiums and may levy an
16 additional premium for the remainder of the period of coverage. The
17 cancellation shall be effective no later than thirty days from the date
18 of the notice in writing advising the employer or self-employed person
19 of the cancellation. Within five days of receiving written notice of
20 the cancellation from the commissioner, an employer must provide
21 written notice of the cancellation to all individuals in the employer's
22 employ.

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

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

30 (1) Beginning July 1, 2014, for each individual, each employer
31 shall pay a premium to the department based on the amount of the
32 employee's wages. Each employer may deduct from the pay of each
33 individual one-half of the full amount that the employer is required to
34 pay for the individual.

35 (2)(a) Beginning July 1, 2014, and ending December 31, 2015, each
36 employer shall pay a premium to the department of two-tenths of one
37 percent of the employee's wages.

1 (b) Beginning January 1, 2016, and ending December 31, 2016, each
2 employer shall pay a premium to the department of four-tenths of one
3 percent of the employee's wages.

4 (c) By September 1, 2016, and by each subsequent September 1st, the
5 commissioner shall adjust the amount of the premium to ensure that the
6 amount is the lowest rate necessary to pay family and medical leave
7 insurance benefits and administrative costs on a current basis, and
8 maintain actuarial solvency in accordance with recognized insurance
9 principles. The adjusted amount of the premium takes effect for the
10 calendar year beginning after the relevant September 1st.

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

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

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

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

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

13 (3) The requirements relating to the assessment and collection of
14 family and medical leave insurance premiums are the same as the
15 requirements relating to the assessment and collection of contributions
16 under Title 50 RCW, including but not limited to penalties, interest,
17 and department lien rights and collection remedies. These requirements
18 apply to:

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

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

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

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

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

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

34 (1) Except as provided in section 18(1) of this act, a person
35 ((aggrieved by a decision of the department under this chapter must))
36 may file a notice of appeal ((with the director)) from any
37 determination or redetermination made by the department with the

1 commissioner, by mail or personally, within thirty days after the date
2 on which a copy of the department's decision was (~~communicated to~~)
3 served on the person. Upon receipt of the notice of appeal, the
4 (~~director~~) commissioner shall request the assignment of an
5 administrative law judge in accordance with chapter 34.05 RCW to
6 conduct a hearing and issue a proposed decision and order. The hearing
7 shall be conducted in accordance with chapter 34.05 RCW.

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

24 (3) If, upon (~~administrative or~~) judicial review, the final
25 decision of the applicable department is reversed or modified, (~~the~~
26 ~~administrative law judge or~~) the court in its discretion may award the
27 prevailing party, other than the department, reasonable attorneys' fees
28 and costs (~~to the prevailing party~~). Attorneys' fees and costs owed
29 by the department, if any, are payable from the family and medical
30 leave insurance account.

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

33 (1) A determination of amount of benefits potentially payable
34 issued under this chapter shall not serve as a basis for appeal under
35 RCW 49.86.120. However, the determination shall be subject to request
36 by the individual on family and medical leave for redetermination by
37 the commissioner at any time within one year from the date of delivery

1 or mailing of such determination, or any redetermination thereof. A
2 redetermination shall be furnished to the individual in writing and
3 provide the basis for appeal under RCW 49.86.120.

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

9 (3) A determination of allowance of benefits shall become final, in
10 the absence of a timely appeal therefrom. The commissioner may
11 redetermine such allowance at any time within two years following the
12 application year in which such allowance was made in order to recover
13 any benefits for which recovery is provided under RCW 49.86.080.

14 (4) A redetermination may be made at any time: (a) To conform to
15 a final court decision applicable to either an initial determination or
16 a determination of denial or allowance of benefits; (b) in the event of
17 a back pay award or settlement affecting the allowance of benefits; or
18 (c) in the case of misrepresentation or willful failure to report a
19 material fact. Written notice of any such redetermination shall be
20 promptly given by mail or delivered to such interested parties as were
21 notified of the initial determination or determination of denial or
22 allowance of benefits and any new interested party or parties who,
23 pursuant to such rule as the commissioner may adopt, would be an
24 interested party.

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

27 (1) An employer, temporary help company, employment agency,
28 employee organization, or other person may not discharge, expel, or
29 otherwise discriminate against ~~((a person))~~ an individual because he or
30 she has filed or communicated to the employer an intent to file a
31 claim, a complaint, or an appeal, or has testified or is about to
32 testify or has assisted in any proceeding, under this chapter, at any
33 time, including during the waiting period described in RCW 49.86.050
34 and the period in which the ~~((person))~~ individual receives family and
35 medical leave insurance benefits under this chapter. ~~((This section~~
36 ~~shall be enforced as provided in RCW 51.48.025.))~~

1 (2) Any individual who believes that he or she has been discharged
2 or otherwise discriminated against by an employer in violation of this
3 section may file a complaint with the commissioner alleging
4 discrimination within ninety days of the date of the alleged violation.
5 Upon receipt of such complaint, the commissioner shall cause an
6 investigation to be made as the commissioner deems appropriate. Within
7 ninety days of the receipt of a complaint filed under this section, the
8 commissioner shall notify the complainant of his or her determination.
9 If, upon such investigation, it is determined that this section has
10 been violated, the commissioner shall bring an action in the superior
11 court of the county in which the violation is alleged to have occurred.

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

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

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

21 ~~(1)((a) Leave taken under this chapter must be taken concurrently~~
22 ~~with any leave taken))~~ If an individual is entitled to employment
23 protection under this chapter and under the federal family and medical
24 leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) (~~or~~
25 ~~under)), chapter 49.78 RCW, or other applicable federal, state, or~~
26 local law, the individual is entitled to employment protection under
27 the other applicable law most favorable to the individual.

28 ~~((b) An))~~ (2) Except as provided in this subsection, if an
29 individual is entitled to family and medical leave under this chapter
30 and under the federal family and medical leave act, chapter 49.78 RCW,
31 or other applicable federal, state, or local law, the employer may
32 require that leave (~~taken~~) under this chapter be taken concurrently
33 (~~or otherwise coordinated~~) with leave (~~allowed~~) under (~~the terms~~
34 ~~of a collective bargaining agreement or employer policy, as applicable,~~
35 ~~for the birth or placement of a child))~~ other applicable laws. The
36 employer must give individuals in its employ written notice of this
37 requirement. Leave from employment under this chapter is in addition

1 to leave from employment during which benefits are paid or are payable
2 under Title 51 RCW or other applicable federal or state industrial
3 insurance laws.

4 (3) In any week in which an individual is earning waiting period
5 credits or receiving benefits under chapter 7.68 RCW, Title 50 or 51
6 RCW, or other applicable federal or state crime victims' compensation,
7 unemployment compensation, industrial insurance, or disability
8 insurance laws, the individual is disqualified from receiving family
9 and medical leave insurance benefits under this chapter.

10 (4)(a) Except as provided in this section, this chapter does not
11 prohibit an employer from negotiating a collective bargaining agreement
12 or adopting employer policies, as applicable, to coordinate existing
13 benefits with leave from employment and wage replacement benefits
14 required under this chapter.

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

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

27 (d) If an employer provides wage replacement benefits to an
28 individual while on family and medical leave through disability
29 insurance or any other means, the individual may elect whether first to
30 receive such benefits or receive family and medical leave insurance
31 benefits under this chapter. An individual may not be required to
32 receive the individual's wage replacement benefits, if any, before
33 receiving family and medical leave insurance benefits under this
34 chapter.

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

37 The ~~((director))~~ commissioner may adopt rules as necessary to

1 implement this chapter. In adopting rules, the ~~((director))~~
2 commissioner shall maintain consistency with the rules adopted to
3 implement the federal family and medical leave act, and chapter 49.78
4 RCW, to the extent such rules are not in conflict with this chapter.
5 The provisions of RCW 34.05.328 do not apply to rules adopted by the
6 commissioner to implement RCW 49.86.060(1) or section 15(3) of this
7 act.

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

10 The family and medical leave insurance account is created in the
11 custody of the state treasurer. All receipts from the premiums imposed
12 under this chapter must be deposited in the account. Expenditures from
13 the account may be used only for the purposes of the family and medical
14 leave insurance program. Only the ~~((director of the department of~~
15 ~~labor and industries))~~ commissioner or the ~~((director's))~~
16 commissioner's designee may authorize expenditures from the account.
17 The account is subject to the allotment procedures under chapter 43.88
18 RCW. An appropriation is required for administrative expenses, but not
19 for benefit payments. ~~((During the 2007-2009 fiscal biennium, the~~
20 ~~legislature may transfer from the family leave insurance account to the~~
21 ~~state general fund such amounts as reflect the excess fund balance of~~
22 ~~the account.))~~

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

25 Whenever, in the judgment of the state investment board, there
26 shall be in the family and medical leave insurance account funds in
27 excess of that amount deemed by the state investment board to be
28 sufficient to meet the current expenditures properly payable therefrom,
29 the state investment board shall have full power to invest, reinvest,
30 manage, contract, or sell or exchange investments acquired with such
31 excess funds in the manner prescribed by RCW 43.84.150, and not
32 otherwise.

33 **Sec. 24.** RCW 43.79A.040 and 2012 c 198 s 8, 2012 c 196 s 6, 2012
34 c 187 s 13, and 2012 c 114 s 3 are each reenacted and amended to read
35 as follows:

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

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

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

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

20 (b) The following accounts and funds must receive their
21 proportionate share of earnings based upon each account's or fund's
22 average daily balance for the period: The Washington promise
23 scholarship account, the Washington advanced college tuition payment
24 program account, the accessible communities account, the community and
25 technical college innovation account, the agricultural local fund, the
26 American Indian scholarship endowment fund, the foster care scholarship
27 endowment fund, the foster care endowed scholarship trust fund, the
28 basic health plan self-insurance reserve account, the contract
29 harvesting revolving account, the Washington state combined fund drive
30 account, the commemorative works account, the county enhanced 911
31 excise tax account, the toll collection account, the developmental
32 disabilities endowment trust fund, the energy account, the fair fund,
33 the family and medical leave insurance account, the food animal
34 veterinarian conditional scholarship account, the fruit and vegetable
35 inspection account, the future teachers conditional scholarship
36 account, the game farm alternative account, the GET ready for math and
37 science scholarship account, the Washington global health technologies
38 and product development account, the grain inspection revolving fund,

1 the industrial insurance rainy day fund, the juvenile accountability
2 incentive account, the law enforcement officers' and firefighters' plan
3 2 expense fund, the local tourism promotion account, the multiagency
4 permitting team account, the pilotage account, the produce railcar pool
5 account, the regional transportation investment district account, the
6 rural rehabilitation account, the stadium and exhibition center
7 account, the youth athletic facility account, the self-insurance
8 revolving fund, the children's trust fund, the Washington horse racing
9 commission Washington bred owners' bonus fund and breeder awards
10 account, the Washington horse racing commission class C purse fund
11 account, the individual development account program account, the
12 Washington horse racing commission operating account (earnings from the
13 Washington horse racing commission operating account must be credited
14 to the Washington horse racing commission class C purse fund account),
15 the life sciences discovery fund, the Washington state heritage center
16 account, ((and)) the reduced cigarette ignition propensity account, the
17 center for childhood deafness and hearing loss account, ((and)) the
18 school for the blind account, the Millersylvania park trust fund, the
19 public employees' and retirees' insurance reserve fund, and the
20 radiation perpetual maintenance fund.

21 (c) The following accounts and funds must receive eighty percent of
22 their proportionate share of earnings based upon each account's or
23 fund's average daily balance for the period: The advanced right-of-way
24 revolving fund, the advanced environmental mitigation revolving
25 account, the federal narcotics asset forfeitures account, the high
26 occupancy vehicle account, the local rail service assistance account,
27 and the miscellaneous transportation programs account.

28 (d) Any state agency that has independent authority over accounts
29 or funds not statutorily required to be held in the custody of the
30 state treasurer that deposits funds into a fund or account in the
31 custody of the state treasurer pursuant to an agreement with the office
32 of the state treasurer shall receive its proportionate share of
33 earnings based upon each account's or fund's average daily balance for
34 the period.

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

1 **Sec. 25.** RCW 49.86.210 and 2011 1st sp.s. c 25 s 2 are each
2 amended to read as follows:

3 Beginning ((~~September~~)) December 1, 2016, the department shall
4 report to the legislature by ((~~September~~)) December 1st of each year on
5 projected and actual program participation, premium rates, fund
6 balances, benefits paid, information on program participants, costs of
7 providing benefits, and outreach efforts.

8 **Sec. 26.** RCW 50.29.021 and 2011 c 4 s 14 are each amended to read
9 as follows:

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

13 (2)(a) An experience rating account shall be established and
14 maintained for each employer, except employers as described in RCW
15 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
16 payments in lieu of contributions, taxable local government employers
17 as described in RCW 50.44.035, and those employers who are required to
18 make payments in lieu of contributions, based on existing records of
19 the employment security department.

20 (b) Benefits paid to an eligible individual shall be charged to the
21 experience rating accounts of each of such individual's employers
22 during the individual's base year in the same ratio that the wages paid
23 by each employer to the individual during the base year bear to the
24 wages paid by all employers to that individual during that base year,
25 except as otherwise provided in this section.

26 (c) When the eligible individual's separating employer is a covered
27 contribution paying base year employer, benefits paid to the eligible
28 individual shall be charged to the experience rating account of only
29 the individual's separating employer if the individual qualifies for
30 benefits under:

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

34 (ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through
35 (x).

36 (3) The legislature finds that certain benefit payments, in whole
37 or in part, should not be charged to the experience rating accounts of

1 employers except those employers described in RCW 50.44.010, 50.44.030,
2 and 50.50.030 who have properly elected to make payments in lieu of
3 contributions, taxable local government employers described in RCW
4 50.44.035, and those employers who are required to make payments in
5 lieu of contributions, as follows:

6 (a) Benefits paid to any individual later determined to be
7 ineligible shall not be charged to the experience rating account of any
8 contribution paying employer. However, when a benefit claim becomes
9 invalid due to an amendment or adjustment of a report where the
10 employer failed to report or inaccurately reported hours worked or
11 remuneration paid, or both, all benefits paid will be charged to the
12 experience rating account of the contribution paying employer or
13 employers that originally filed the incomplete or inaccurate report or
14 reports. An employer who reimburses the trust fund for benefits paid
15 to workers and who fails to report or inaccurately reported hours
16 worked or remuneration paid, or both, shall reimburse the trust fund
17 for all benefits paid that are based on the originally filed incomplete
18 or inaccurate report or reports.

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

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

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

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

30 (d) In the case of individuals who requalify for benefits under RCW
31 50.20.050 or 50.20.060, benefits based on wage credits earned prior to
32 the disqualifying separation shall not be charged to the experience
33 rating account of the contribution paying employer from whom that
34 separation took place.

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

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

9 (g) The forty-five dollar increase paid as part of an individual's
10 weekly benefit amount as provided in RCW 50.20.1201 and the twenty-five
11 dollar increase paid as part of an individual's weekly benefit amount
12 as provided in RCW 50.20.1202 shall not be charged to the experience
13 rating account of any contribution paying employer.

14 (h) With respect to claims where the minimum amount payable weekly
15 is increased to one hundred fifty-five dollars pursuant to RCW
16 50.20.1201(3), benefits paid that exceed the benefits that would have
17 been paid if the minimum amount payable weekly had been calculated
18 pursuant to RCW 50.20.120 shall not be charged to the experience rating
19 account of any contribution paying employer.

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

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

28 (4)(a) A contribution paying base year employer, not otherwise
29 eligible for relief of charges for benefits under this section, may
30 receive such relief if the benefit charges result from payment to an
31 individual who:

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

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

37 (iii) Is unemployed as a result of closure or severe curtailment of

1 operation at the employer's plant, building, worksite, or other
2 facility. This closure must be for reasons directly attributable to a
3 catastrophic occurrence such as fire, flood, or other natural disaster;

4 (iv) Continues to be employed on a regularly scheduled permanent
5 part-time basis by a base year employer and who at some time during the
6 base year was concurrently employed and subsequently separated from at
7 least one other base year employer. Benefit charge relief ceases when
8 the employment relationship between the employer requesting relief and
9 the claimant is terminated. This subsection does not apply to shared
10 work employers under chapter (~~(50.06-50.60)~~) 50.60 RCW; (~~(or)~~)

11 (v) Was hired to replace an employee who is a member of the
12 military reserves or National Guard and was called to federal active
13 military service by the president of the United States and is
14 subsequently laid off when that employee is reemployed by their
15 employer upon release from active duty within the time provided for
16 reemployment in RCW 73.16.035; or

17 (vi) Worked for an employer for fifteen weeks or less, and was laid
18 off at the end of temporary employment when that individual temporarily
19 replaced a permanent employee receiving family and medical leave
20 insurance benefits under chapter 49.86 RCW, and the layoff is due to
21 the return of that permanent employee. This subsection applies to
22 claims with an effective date on or after July 5, 2015.

23 (b) The employer requesting relief of charges under this subsection
24 must request relief in writing within thirty days following mailing to
25 the last known address of the notification of the valid initial
26 determination of such claim, stating the date and reason for the
27 separation or the circumstances of continued employment. The
28 commissioner, upon investigation of the request, shall determine
29 whether relief should be granted.

30 NEW SECTION. Sec. 27. A new section is added to chapter 82.04 RCW
31 to read as follows:

32 In computing the tax imposed under this chapter, a credit is
33 allowed for an employer with fewer than fifty employees for each
34 working day during each of twenty or more calendar workweeks in the
35 current or preceding calendar year within seventy-five miles of the
36 employee's worksite. The credit is allowed during the first twenty-
37 four months following the hire date of the employer's first employee.

1 The credit is equal to the full amount of premium paid to the
2 department for an individual, less any amount deducted from the pay of
3 the individual. The credit may not exceed the tax otherwise due under
4 this chapter for the tax reporting period. Unused credit may not be
5 carried over to be credited against taxes incurred in subsequent tax
6 reporting periods. The total amount of all credits allowed under this
7 section for an employer may not exceed one thousand dollars. No
8 refunds may be granted for credits under this section.

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

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

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

15 (b) Determine that the rule is needed to achieve the general goals
16 and specific objectives stated under (a) of this subsection, and
17 analyze alternatives to rule making and the consequences of not
18 adopting the rule;

19 (c) Provide notification in the notice of proposed rule making
20 under RCW 34.05.320 that a preliminary cost-benefit analysis is
21 available. The preliminary cost-benefit analysis must fulfill the
22 requirements of the cost-benefit analysis under (d) of this subsection.
23 If the agency files a supplemental notice under RCW 34.05.340, the
24 supplemental notice must include notification that a revised
25 preliminary cost-benefit analysis is available. A final cost-benefit
26 analysis must be available when the rule is adopted under RCW
27 34.05.360;

28 (d) Determine that the probable benefits of the rule are greater
29 than its probable costs, taking into account both the qualitative and
30 quantitative benefits and costs and the specific directives of the
31 statute being implemented;

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

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

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

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

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

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

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

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

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

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

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

29 (c) Promote and assist voluntary compliance; and

30 (d) Evaluate whether the rule achieves the purpose for which it was
31 adopted, including, to the maximum extent practicable, the use of
32 interim milestones to assess progress and the use of objectively
33 measurable outcomes.

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

1 (a) Coordinate implementation and enforcement of the rule with the
2 other federal and state entities regulating the same activity or
3 subject matter by making every effort to do one or more of the
4 following:

- 5 (i) Deferring to the other entity;
- 6 (ii) Designating a lead agency; or
- 7 (iii) Entering into an agreement with the other entities specifying
8 how the agency and entities will coordinate implementation and
9 enforcement.

10 If the agency is unable to comply with this subsection (4)(a), the
11 agency must report to the legislature pursuant to (b) of this
12 subsection;

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

14 (i) The existence of any overlap or duplication of other federal or
15 state laws, any differences from federal law, and any known overlap,
16 duplication, or conflict with local laws; and

17 (ii) Make recommendations for any legislation that may be necessary
18 to eliminate or mitigate any adverse effects of such overlap,
19 duplication, or difference.

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

22 (i) Significant legislative rules of the departments of ecology,
23 labor and industries, health, revenue, social and health services, and
24 natural resources, the employment security department, the forest
25 practices board, the office of the insurance commissioner, and to the
26 legislative rules of the department of fish and wildlife implementing
27 chapter 77.55 RCW; and

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

33 (b) This section does not apply to:

34 (i) Emergency rules adopted under RCW 34.05.350;
35 (ii) Rules relating only to internal governmental operations that
36 are not subject to violation by a nongovernment party;

37 (iii) Rules adopting or incorporating by reference without material
38 change federal statutes or regulations, Washington state statutes,

1 rules of other Washington state agencies, shoreline master programs
2 other than those programs governing shorelines of statewide
3 significance, or, as referenced by Washington state law, national
4 consensus codes that generally establish industry standards, if the
5 material adopted or incorporated regulates the same subject matter and
6 conduct as the adopting or incorporating rule;

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

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

12 (vi) Rules that set or adjust fees under the authority of RCW
13 19.02.075 or that set or adjust fees or rates pursuant to legislative
14 standards, including fees set or adjusted under the authority of RCW
15 19.80.045;

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

19 (viii) Rules of the department of revenue that adopt a uniform
20 expiration date for reseller permits as authorized in RCW 82.32.780 and
21 82.32.783; or

22 (ix) Rules of the employment security department to implement RCW
23 49.86.060(1) or section 15(3) of this act.

24 (c) For purposes of this subsection:

25 (i) A "procedural rule" is a rule that adopts, amends, or repeals
26 (A) any procedure, practice, or requirement relating to any agency
27 hearings; (B) any filing or related process requirement for making
28 application to an agency for a license or permit; or (C) any policy
29 statement pertaining to the consistent internal operations of an
30 agency.

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

34 (iii) A "significant legislative rule" is a rule other than a
35 procedural or interpretive rule that (A) adopts substantive provisions
36 of law pursuant to delegated legislative authority, the violation of
37 which subjects a violator of such rule to a penalty or sanction; (B)
38 establishes, alters, or revokes any qualification or standard for the

1 issuance, suspension, or revocation of a license or permit; or (C)
2 adopts a new, or makes significant amendments to, a policy or
3 regulatory program.

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

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

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

17 (b) The costs incurred by state agencies in complying with this
18 section;

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

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

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

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

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

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