No. 93429-1

SUPREME COURT OF THE STATE OF WASHINGTON

No. 73024-0-I
COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SARAH CHRISTNER,

Petitioner,

v.

STATE OF WASHINGTON DEPARTMENT
OF EMPLOYMENT SECURITY,

Respondent.

PETITION FOR REVIEW BY SARAH CHRISTNER

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I. IDENTITY OF PETITIONER

Petitioner is Sarah Christner, a former unemployment benefit claimant and recipient. She was the *Appellant* in the Court of Appeals and in Snohomish County Superior Court, the *Petitioner* before the Employment Security Department's Commissioner's Review Office, and the *Appellee* before the Office of Administrative Hearings.

II. CITATION TO THE COURT OF APPEALS' DECISION

Ms. Christner seeks review of the Court's of Appeals' unpublished opinion in *Christner v. Emp't Sec. Dep't.* No. 730424-0-I, Wash. Ct. App. (June 6, 2016), which terminated review of Ms. Christener's eligibility and entitlement to unemployment benefits ("Opinion").[1]

III. ISSUES PRESENTED FOR REVIEW

A. Whether the Court of Appeals erred by not liberally construing the Employment Security Act when undertaking statutory interpretation of RCW 50.04.294, when omitting this analysis could jeopardize Washington's receipt of federal funding of the Federal-State Unemployment Insurance Program? RCW 34.05.570(3)(d). Yes.

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[1] A copy of the Opinion is attached at *Appendix A.*

B. Whether the Court of Appeals erred in interpreting "standards of behavior" under RCW 50.04.294(1)(b) *subjectively* rather than *objectively* and adding a new and unnecessary "hardship" standard for support—both of which go beyond what our Legislature intended under a plain meaning interpretation and when such an interpretation will serve to disqualify more unemployment claimants than existing coverage allows? RCW 34.05.570(3)(d). Yes.

C. Whether an unemployment claimant's fundamental Constitutional due process protections for a fair hearing before a neutral fact-finder under the Fourteenth Amendment and federal law, § 303(a)(3) of the Social Security Act--i.e., to have proper notice, an opportunity to confront and cross-examine one's accusers, and the opportunity to object to or rebut documentary evidence—can be ignored after ESD determines benefits should be allowed and where (i) substantial evidence in the record establishes that the claimant was prejudiced and harmed by the due process deprivations and (ii) Washington's disregard of these fundamental rights could jeopardize federal funding to the unemployment insurance program? RCW 34.05.570(3)(d), (i). No.

D. Whether it is error to permit an employer to circumvent its legal obligation to produce potentially disqualifying information at the initial eligibility stage, when its failure to do so circumvents the claimant's right

to due process rights and when the charge of "misconduct," under the guise of a policy violation, is raised for the first time at the hearing, particularly where such incongruity violates the Employment Security Act? RCW 34.05.570(3)(d), (e), (i). Yes.

E. Whether substantial evidence in the record shows WCPM did not meet its burden of proof with credible or reliable evidence by a preponderance of evidence under RCW 50.04.294(1)(a), (2)(f) or (1)(b)? RCW 34.05.570(3)(e). Yes.

IV. STATEMENT OF THE CASE

Petitioner, Sarah Christner was a front desk receptionist who worked at various clinic locations for Washington Center for Pain Management (WCPM), the former employer in this case. She was paid $15 per hour and the job was at-will. CP 109. Ms. Christner testified that when she interviewed, she told WCPM about her long-term career goal to obtain a full-time job in her field of law enforcement. CP 135, 158. Ms. Christner also was unavailable to WCPM one weekend a month in her military career as a United States Army Reservist. CP 135, 155, 159.

In the last few weeks of employment, Ms. Christner experienced two acute medical issues necessitating her need to take time off from work

on "short notice." CP 135, 155, 158, 173-75. WCPM has a policy that states:

> "All requests from (Inaudible) must be submitted in writing, urn -- urn, through your supervisor at least two weeks in advance of approval by the director of operations and will be granted as staffing allows....The objective of the time off is to ensure that absences will be scheduled in advance whenever possible."
>
> CP 132.

WCPM did not produce a copy of this policy.
The day after Ms. Christner took time off for a doctor's appointment for an acute medical issue, WCPM reminded her about the two weeks' advance notice for time off and made it a "no exceptions" rule as applied only to Ms. Christner. CP 173. Ms. Christner reminded WCPM that she was looking for looking for fulltime work in law enforcement and that she could not guarantee she could meet WCPM's requirement to always put in the requests two weeks' advance notice; WCPM, in turn, asked for her resignation. CP 156, Opinion at p. 3. Ms. Christner provided the resignation as directed and continued to provide labor at WCPM for two more weeks. CP 156.

Ms. Christner filed for unemployment benefits. On the *Discharge Questionnaire, EMS 5341-C,* Ms. Christner reported the reason WCPM gave her was, "Employer was unable to accommodate short notice time off requests any further." CP 149-52, at 149. She certified that her "time

off requests made with as much diligence as possible," that "she tried [her] best to schedule appointments around work hours but most times [she] was unable to do that," and that "[m]ost appointments were for medical reasons and some were personal." CP 150.

WCPM certified on the *EMS 5361 Form* that Ms. Christner quit her job. CP at 147-48. Opinion at p. 3. WCPM only completed the quit section of the form. CP at 147-48. WCPM included two documents to ESD to support a "quit": (1) a "Resignation" letter, and (2) a "Goodbye" letter to WCPM staff. CP at 153-54.

During ESD's fact-finding investigation, WCPM did not produce copies of any relevant attendance, paid time off, or protected leave employment policies. WCPM did not provide attendance records or dates and details of the alleged incidents, or provide relevant data as to whether the requests were partial or full-day requests or whether these requests were approved. CP 140. ESD's determination states:

> "Based on the available information, no evidence has been provided showing your actions were a willful or deliberate disregard of your employer's rules, policies or best interests."
>
> CP at 140.

ESD adjudicated the "quit" as a "discharge" and allowed benefits, concluding that as a matter of law Ms. Christner was eligible for benefits. Opinion at p. 3. CP at 139-43. WCPM filed an "appeal," and for the first

time, requested to be relieved of benefit charges. In its letter to ESD, WCPM's CEO reiterated that Ms. Christner voluntarily quit and stated its intent regarding proving misconduct::

> "Our intent was not to establish misconduct, but rather to show that the claimant's departure was due to a voluntary quit. We believe a statement we made during a phone call was taken out of context. Per attached emails, while we did request the claimant to resign, it was as a result of her repeated requests for time off on short notice, even by her own admission. The claimant's position requires full time staffing and the business cannot accommodate multiple short notice requests for time off. We therefore request relief of benefit charging."
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> Letter from Jae Lee, CEO, WCPM. CP at 146.

The case was set for a hearing before an administrative law judge (ALJ) at the Office of Administrative Hearings. The Notice of Hearing did not cite RCW 50.04.294, which defines misconduct; instead it cited RCW 50.20.066—the statute that provides the amount of time a claimant will be disqualified under RCW 50.04.294.[2]

At the hearing, Ms. Christner represented herself pro se. WCPM was represented by Ms. Bundy. CP 86, 111. When asked whether Ms. Christner quit, was discharged, or laid off, Ms. Bundy testified that Ms. Christner "ultimately quit." CP 96. WCPM did not use the word, "discharge" or "terminate to characterize Ms. Christner's separation from

[2] The misconduct statute is attached at *Appendix C.*

employment during the hearing. CP 77-137. Ms. Christner stated she was discharged. CP 113. The ALJ did not offer Ms. Christner an opportunity to confront or cross-examine Mr. Bromberg, the Controller, after the ALJ called him to testify, or of Mr. Lee, the CEO later in the hearing after he testified. CP 86, 111-12, 133-34, 136. The ALJ closed the evidence portion of the hearing without adding additional documents. CP 134. WCPM did not make any closing argument about misconduct. CP 136.

The ALJ reversed ESD's determination to allow benefits and remanded the overpayment. The basis for the ALJ's disqualification was under RCW 50.04.294(1)(a) and RCW 50.04.294(2)(f). Concl. Of Law 7 and 8 at CP 163. The ALJ did not make credibility findings. CP 161-68.

Still proceeding pro se, Ms. Christner petitioned for review to ESD's Commissioner's Review Office, attributing error to the ALJ's findings of fact and conclusions of law and pointed out the hearing was tilted in the employer's favor.[3] CP 172-75.

The ESD Commissioner "affirmed *as corrected*" the ALJ's initial order, removing the disqualification under RCW 50.04.294(1)(a) and (2)(b) denying under RCW 50.04.294(1)(b), and remanding the overpayment. CP 178-80 (emphasis retained). The Commissioner did not make credibility findings. CP 178-80.

[3] Ms. Christner's Petition for Review is attached as *Appendix B.*

At oral argument on January 13, 2016, the parties acknowledged there is no precedential authority that interprets RCW 50.04.294(1)(b). Following oral argument, the parties submitted supplemental briefing on what weight and effect the Court should assign to ESD's Unemployment Insurance Resource Manual (UIRM).

On June 6, 2016, the Court of Appeals filed its decision to affirm the denial of benefits under RCW 50.04.294(1)(b), holding the "short notice" requests for time off constituted a "deliberate violation or disregard of the standards of behavior which the employer has the right to expect of its employees." Opinion at 12. Ms. Christner petitions the Supreme Court for review.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Under RAP 13.4(b), "[a] petition for review will be accepted by the Supreme Court only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court."

RAP 13.4(b)(1)-(4).

As explained below and pursuant to RAP 13.4(b), Ms. Christner's case presents several issues of substantial public interest, conflict of legal interpretations under RCW 50.04.294(1)(a) and (2)(f) cases, and fundamental legal questions regarding Constitutional due process rights.

1. Ms. Christner is entitled to a liberal construction of the Employment Security Act, including RCW 50.04.294(1)(b). RAP 13.4(b)(4).

The Social Security Act of 1935 established the Federal-State system of unemployment insurance. It is the public policy of Washington that all provisions of the Employment Security Act ("Act") be liberally construed to maintain the economic security of our State. Appellant's Op. Br. at 26-28. Washington must conform to federal laws and guidelines and apply the Act so that claimants are able to obtain the benefits to which they are entitled to under the law and so employers may qualify for tax credits imposed under 3304(a)(9)(A) of the Federal Unemployment Tax Act (FUTA). A failure to do so could jeopardize federal funding.

When Washington's Legislature implemented the Employment Security Act, Title 50 RCW, it mandated it "...*be liberally construed* for the purpose of *reducing involuntary unemployment* and the suffering

caused thereby to a minimum." *Preamble to the Employment Security Act,* RCW 50.01.010 (emphasis added); Appellant's Op. Br. at 26-28. Not only must the Act must be liberally construed, it must be done so in favor of the unemployed worker. Appellant's Op. Br. at 27-28. "[T]he statutory mandate of liberal construction within the Employment Security Act requires the courts to view with caution any construction that would narrow the Act's coverage."[4]Appellant's Op. Br. at 22.

In 2003, during a Special Session of the Legislature, Senate Bill 6097 was introduced and passed, apparently without going to committee or a public hearing. In addition to an overhaul of the UI tax system, the bill proposed drastic revisions to the quit and discharge statutes. At that time, the federally-required "liberal construction" was removed. In 2005, the liberal construction was added back after the Legislature found the UI Program fell short of the goals of the system and ESD was "failing to provide equitable benefits to unemployed workers."[5]

Because Washington's Legislature has twice made it abundantly clear the Act is to be liberally construed, it is imperative that ESD and our courts heed that directive. *See* Appellant's Op. Br. at 22.

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[4] *W. Ports Transp., Inc. v. Employment Sec. Dep't of State of Wash.*, 110 Wn. App. 440, 450, 41 P.3d 510, 516 (2002).

[5] *Gaines v. Employment Sec. Dep't,* 140 Wn. App 791, 797-798, 166 P.3d 1257 (2007).

Although the Court of Appeals correctly identifies that the Act exists to provide unemployment benefits to claimants who become involuntarily unemployed "through no fault of their own," it is legal error not to apply a liberal construction to the interpretation of (1)(b) for purposes of Ms. Christner's claim. Opinion at p. 5. The court's analysis should begin and end with the Legislature's mandate in mind.

a. The Court's interpretation of (1)(b) serves to narrow the coverage of the Employment Security to exclude more types of behavior than was intended by the Legislature.

The definition and application of RCW 50.04.294(1)(b) to an alleged rule violation is an issue of first impression. The Court of Appeals' interpretation of (1)(b) is in error because it will serve to exclude *more types of behavior* as misconduct that was intended by the Legislature or that is supported by a plain meaning interpretation.

When the ESD Commissioner "affirmed as corrected" the disqualification, it rebranded the alleged rule violation as a "standard of behavior" under RCW 50.04.294(1)(b), and in so doing bypassed the analysis required to show the claimant acted in 'willful or wanton disregard' of the rights title and interests of the employer under (1)(a) and the 'known and reasonable rule' analysis under (2)(f). Opinion at p. 6.

b. Under its plain meaning, RCW 50.04.294(1)(b) is an *objective* standard—not a *subjective* one.

The Court of Appeals erred in conflating the "rights" ascribed in (1)(b) with the "rights, title, and interest" in (1)(a). However, the rights under these two prongs are different for at least one very important reason: Behavior that an employer has "the right" to expect under (1)(b) is that behavior for which no warning or notice is required. It is the kind of conduct that is universally known and objectively understood to be misconduct—regardless of whether the employer has a policy prohibiting the conduct and regardless if the claimant was on notice. WCPM does not have "the right" to require that employees not request time off on short notice because it cuts against Ms. Christner's right as an employee to ask and even take time off on short notice in certain situations, such as for intermittent FMLA, or when ordered to do so by the USAR.

While *taking* time off on short notice without approval could in theory be a "standard of behavior" under (1)(b) if the employer can establish, objectively, what is "short notice." However, time off policies and definitions for "short notice" are unique to each employer. There is no universal definition for what is "short notice."

The reason why a rule violation under (1)(b) must be an objective standard is because otherwise (1)(b) could be applied subjectively to any employer policy by rebranding the conduct as "standards of behavior" and

establishing thereby circumventing 'willful' or 'wanton' analysis under RCW 50.04.294(1)(a) or 'reasonableness' analysis under 294(2)(f).

This is what occurred in Ms. Christner's case when the ESD Commissioner "corrected" the disqualification from RCW 50.04.294(1)(a) and (2)(f) to (1)(b) and found her conduct "evinced a deliberate violation and disregard of standards of behavior which an employer has the right to expect of an employee." *See* Opinion at p. 6.

c. It is error to use a subjective "hardship" analysis to support objectively-derived behavior under RCW 50.04.294(1)(b).

Contrary to the Court's holding, there is no need to show a 'hardship' for a disqualification under (1)(b). This analysis is unnecessary, goes against the plain meaning of the statute, and does not comport with a liberal construction of the Act. Opinion at 3, 4, 6. What matters for objectively-derived behavior under (1)(b) is whether the claimant acted *deliberately.* RCW 50.04.294(1)(b).

A 'deliberate disregard' under (1)(b) is a lesser standard than a 'willful or wanton disregard' under (1)(a) and matches the objectively understood violations under (1)(b). ESD's UIRM supports this definition:

> "Misconduct is generally established when a claimant ***intentionally*** violates or disregards standards of behavior the employer has the right to expect from an employee. Standards of behavior ***are standards an employee is expected to follow without any prior notice or warning by***

> ***the employer.*** There is no requirement that the employer have a written rule prohibiting the behavior. For example, if an employee comes to work under the influence of illegal drugs or alcohol or steals from the employer, he or she has violated the standards. ***There is no circumstance that excuses the misconduct.***
>
> ...
>
> Impudence, insolence, disrespectfulness or rudeness to one's supervisor ***may be considered a violation of universally accepted standards of behavior.***"
>
> ....
>
> Employment Security Department's *Unemployment Insurance Resource Manual,* 5440 – Discharge, March 8, 2013. (Emphasis added).

In *Christner,* had the Court of Appeals undertaken the proper analysis under RCW 50.04.294(1)(a) and (2)(f) as originally decided by the ALJ, benefits would have been allowed for two reasons.[6,7] First, WCPM's policy was not reasonable and was not uniformly applied to all employees. Second, WCPM did not prove that Ms. Christner willfully or wantonly disregarded it. If it had, the ESD Commissioner would not have removed the disqualification under these two those prongs. ESD argued

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[6] *See In re Griswold,* 102 Wn. App. 29, 32, 15 P.3d 153, 155 (2000).

[7] Ms. Christner alerts this Court of the recent unpublished decision in *Rapada v Nooksack Indian Tribe,* Wash. Ct. App. No. 74116-1-I, decided June 20, 2016, which properly analyzed willfulness and wantonness and reasonableness under (1)(a) and (2)(f). That opinion held an employer's after-the-fact approval and inconsistent employer practices rendered the good faith rule violation not to be misconduct.

below that the courts do not need to consider (1)(a) and (2)(f) that ESD did not have to show reasonableness because the ESD Commissioner did not make it part of its final decision, but that is incorrect. Rsp. Br. at 14, FN 7.

d. It is error to hold substantial evidence in the record exists to support a disqualification under RCW 50.04.294(1)(b) or that Ms. Christner was "on notice" that she would be defending misconduct. RCW 34.05.570(3)(e).

First, the evidence in the record shows that WCPM did not inform Ms. Christner she was being fired for misconduct. This fact is uncontroverted. Second, WCPM had an affirmative obligation to timely and accurately produce potentially disqualifying information to ESD *before* ESD rendered its determination of eligibility. WAC 192-130-050. WCPM certified to ESD that Ms. Christner quit. CP 14748. ESD's determination of eligibility, which states WCPM provided "no evidence" to support a finding of disqualifying misconduct.

Third, after ESD adjudicated Ms. Christner claim, WCPM's CEO reiterated that Ms. Christner quit her job and repudiated any intent of establishing misconduct by stating: *"Our intent was not to establish misconduct,* but rather to show that the *claimant's departure was due to a voluntary quit.*" CP at 146 (emphasis added). WCPM's repudiation of misconduct should have negated its contrary and self-serving position raised for the first time at the hearing that 'misconduct' caused the job

separation.[8] RCW 50.36.010-030. This is particularly when it is clear from the record that WCPM's motivation was solely to obtain relief of benefit charges. CP at 146.

WCPM testified at the hearing, but did not advance argument that Ms. Christner should be disqualified for "misconduct," let alone under RCW 50.04.294(1)(b). Claimants should not be defending allegations of misconduct for the first time at the appeal hearing, after the decision of eligibility has been investigated and adjudicated by ESD. CP 139-43. WCPM's tactic unfairly prejudiced Ms. Christner's right to a fair hearing.

Fourth, WCPM failed to meet the preponderance of evidence standard with reliable or credible evidence. WCPM did not prove prior incidents or explain key facts. Misconduct should not be proven by vague "averages" or equivocating estimates. *See* Opinion at 2-3.

Fifth, the Court of Appeal's finding that "WCPM only later found" out that some of the requests for time off were for job seeking activities is not supported in the record as having been part of WCPM's decision to terminate. *See* Opinion at 9. This after-acquired evidence was not part of

[8] Ms. Christner ask this Court to take judicial notice of RCW 50.36.030 which makes it a misdemeanor for an employer to supply contrary information pertaining to the cause of a claimant's separation from work; RCW 50.36.020, which makes it a gross misdemeanor for an employer to willfully attempt in any manner to evade or defeat unemployment contributions; and RCW 50.36.010, which makes it a misdemeanor for any person to knowingly give any false information or withhold any material information on a claim. These statutes are included in *Appendix C.*

the separation decision at the time WCPM decided to request Ms. Christner's resignation and as such, should not be relied upon to support a misconduct finding. CP 162. If WCPM had this belief prior to making its decision to terminate, WCPM should have disclosed this to Ms. Christner and to ESD. Ms. Christner's due process rights to confront and prepare a defense was short-circuited by these actions.

2. The *Opinion* sanctions procedural irregularities that deprived Ms. Christner's constitutionally-protected right to a fair hearing.

Unemployment benefits are a property interest protected by the Fourteenth Amendment. "Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property" under the Fourteenth Amendment. *Carey v. Piphus, 435 U.S. 247, 259, 98 S. Ct. 1042, 55 L. Ed. 2d 252 (1978).* (emphasis added). This is why due process formalities are so important to administrative proceedings involving unemployment benefits. *See Id.*

It was error to dispose of Ms. Christner's due process concerns by segmenting the analysis of each procedural problem individually without regard to the consideration of the whole impact on Ms. Christner's right to a fair hearing. Due process formalities should be upheld and not

disregarded in administrative proceedings, particularly when claimants are representing themselves pro se and have not waived their rights.

Findings of fact must be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed.RCW 34.05.461. Each of the requisite criteria must be contained in the Notice of Hearing. RCW 34.05.434. Ms. Christner did not waive her right to proper notice. WAC 10-08-040. RCW 50.04.294 provides the definition for misconduct including the exceptions to misconduct in subsection (3); whereas RCW 50.20.066 provides the disqualification period. CP at 182-86. Ms. Christner's Notice of Hearing failed to cite RCW 50.04.294. The omission of RCW 50.04.294 renders it defective.[9]

The Court of Appeals held that even though the "definitional statute," RCW 50.04.294, was not referenced in the Notice of Hearing, Ms. Christner was sufficiently "on notice" to defend against misconduct. Opinion at 10-11. But such a finding contradicts the uncontroverted evidence in the record—which are verities on appeal—that establish (1) misconduct was never alleged by WCPM to Ms. Christner at the time of termination (2) misconduct was not alleged to ESD prior to adjudicating her claim, and (3) misconduct was not alleged in its letter of appeal.

[9] The Notice of Hearing also cites the wrong authoritative statute for APA's notice requirements in citing RCW 34.05.431 instead of RCW 34.05.434.

Ms. Christner was entitled to an opportunity to confront and cross-examine two of the three employer witnesses after the ALJ called them to testify. CP 86, 111-12, 133-34, 136. Not affording her this opportunity unfairly deprived her ability to defend her case. Likewise, Ms. Christner was entitled to an opportunity to object to or rebut documentary evidence that was added to the record after the ALJ closed the record. Non-authenticated, non-admitted evidence is not reliable and should never have been relied upon by the Commissioner or considered as supporting evidence for this Opinion. CP at 187-89. Opinion at 3; 7, citing to CP 188.

Finally, it is important for this Court to decide these issues given the recent court-proposed rule amendments to GR 14.1 and RAP 13.4(b). On June 2, 2016, this Court adopted the amendments to GR 14.1 and RAP 13.4(b). Effective September 1, 2016, unpublished appellate opinions dated on or after March 1, 2013 may be cited as "non-binding authority," and may be accorded "such persuasive value as the court deems appropriate."[10] Under amended RAP 13.4(b), unpublished opinions that are in conflict with unpublished opinions will not provide a basis for review to this Court on that basis alone.

[10] *See* Adopted Amendments to GR 14.1 and RAP 14.4(b), Supreme Court, 25700-A-1150 (June 2, 2016).

Even though the Opinion is unpublished, its analysis may be used as persuasive value to disqualify other claimants for "rule violations" which have been re-branded as (1)(b) "standards of behavior" without the proper analysis—and there will be no right of review if such decisions conflict with unpublished opinions on that basis alone. Given ESD takes conflicting positions depending on whether the final decision is in favor of the employer or the claimant, this has significant import.[11]

VI. CONCLUSION

For the foregoing reasons, Ms. Christner asks this Court to accept review. This Court has an opportunity to clarify the law—and to provide justice to Ms. Christner who was wrongfully accused of misconduct under RCW 50.04.294(1)(b) and was deprived of a fair hearing.

RESPECTFULLY SUBMITTED this 5th day of July, 2016.

LOCKERBY LAW, PLLC

By: _____
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Attorney for Petitioner, Sarah Christner

[11] Compare Opinion with *Kirby v. State, Dep't of Employment Sec.*, 179 Wn. App. 834, 847, 320 P.3d 123, 129 (2014), *review denied sub nom. Kirby v. Dep't of Employment Sec.*, 181 Wn.2d 1004, 332 P.3d 985 (2014).

APPENDICES

Appendix

A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SARAH CHRISTNER, Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF EMPLOYMENT SECURITY, Respondent.	No. 73024-0-I DIVISION ONE UNPUBLISHED OPINION FILED: June 6, 2016

TRICKEY, J. — Sarah Christner appeals the superior court's order affirming the decision of the Commissioner of the Washington State Employment Security Department to deny her claim for unemployment compensation benefits. The Commissioner properly concluded that Christner's conduct evinced a deliberate violation of standards of behavior that her employer had the right to expect of her. Because this constitutes disqualifying misconduct under RCW 50.04.294(1)(b), we affirm.

FACTS

In November 2012, Christner began working as a full-time receptionist for the Washington Center for Pain Management (WCPM) in Bellevue, Washington. WCPM operates multiple clinics and requires a receptionist at each clinic location. A policy at WCPM requires that all requests for time off be submitted in writing at least two weeks in advance in order to "ensure that absences will be scheduled in advance whenever possible."[1]

Over the course of her employment, Christner made several requests for

[1] Clerk's Papers (CP) at 132.

time off. Many of these requests were made with short notice. Christner's supervisor, Sarah Bundy, testified that Christner's requests were very difficult to accommodate because WCPM would have to "scramble" to find coverage.[2] Bundy believed that Christner's requests were due to medical appointments.

On September 26, 2013, Bundy e-mailed Christner. She acknowledged that Christner had health conditions requiring her to go to the doctor often. But she stated that this was "becoming very difficult with scheduling, especially when there is not adequate time given prior to the request."[3] She requested that Christner provide a doctor's note projecting the number of anticipated future doctor appointments. She also stated that it would be preferable if Christner could schedule doctors' appointments without missing work.

Following this e-mail, Christner continued to request time off on short notice. On October 10, 2013, Christner requested time off on October 23, 2013 for personal reasons. She did not receive a response.

On October 18, 2013, Christner e-mailed Bundy. She acknowledged that it had "been increasingly difficult to accommodate as many time off requests as [she] ha[s] requested in such short notice."[4] She disclosed that her long-term career objective was to pursue employment in law enforcement. She stated that most of her time off requests were for medical appointments but, more recently, she had been requesting time off "for personal matters regarding appointments for other employment."[5] She stated that she would make requests for time off for

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[2] CP at 102.
[3] CP at 188.
[4] CP at 155.
[5] CP at 155.

medical appointments at least two weeks in advance. But she explained that the jobs for which she was applying involved exams that were scheduled with short notice and that this was beyond her control.

Bundy responded by requesting that Christner give two weeks' notice and resign. She stated, "We can accommodate during those two weeks and find a replacement. However, we cannot continue to accommodate these short notice time off requests beyond the two weeks as we need a reliable full time front desk receptionist."[6] That same day, Christner tendered her resignation by e-mail. Christner continued to work at WCPM for two more weeks. Her last day of employment was Friday, November 1, 2013.

Christner subsequently applied for unemployment compensation benefits. She reported that she was discharged because her employer was unable to accommodate short notice time off requests any further. In contrast, WCPM reported that Christner voluntarily resigned to pursue a position with another employer and required time off to do preliminary tests for the new employer.

The Employment Security Department adjudicated the job separation as a discharge and granted Christner benefits on the basis that she was discharged for reasons that did not constitute misconduct. An administrative law judge (ALJ) reversed the Department's decision. The ALJ concluded that Christner was not entitled to unemployment benefits because she was discharged for reasons constituting misconduct.

The Commissioner affirmed the ALJ's order. In doing so, the Commissioner adopted the ALJ's findings of fact and conclusions of law and

[6] CP at 156.

clarified that Christner committed disqualifying misconduct under RCW 50.04.294(1)(b). Christner subsequently petitioned for judicial review to the Snohomish County Superior Court. The superior court affirmed the Commissioner's decision. This appeal followed.

ANALYSIS

Judicial review of a decision made by the Commissioner is governed by Washington's Administrative Procedure Act (APA), chapter 34.05 RCW. Tapper v. Emp't Sec. Dep't, 122 Wn.2d 397, 402, 858 P.2d 494 (1993). This court sits in the same position as the superior court and applies the standards of the APA directly to the administrative record before the agency. Tapper, 122 Wn.2d at 402. This court reviews the Commissioner's decision, not the decision of the ALJ, except to the extent that the Commissioner adopts the ALJ's findings of fact. Verizon Nw., Inc. v. Emp't Sec. Dep't, 164 Wn.2d 909, 915, 194 P.3d 255 (2008).

The Commissioner's decision is prima facie correct. RCW 50.32.150. The party challenging the agency's action bears the burden of demonstrating its invalidity. RCW 34.05.570(1)(a). The APA provides nine bases for overturning agency orders in adjudicative proceedings. RCW 34.05.570(3)(a)-(i). These include when the reviewing court determines that the Commissioner erroneously interpreted or applied the law, the order is not supported by substantial evidence, or the order is arbitrary or capricious. RCW 34.05.570(3)(d), (e), (i).

We review findings of fact to determine whether they are supported by substantial evidence. Barker v. Emp't Sec. Dep't, 127 Wn. App. 588, 592, 112 P.3d 536 (2005). Evidence is substantial if it is "sufficient . . . to persuade a

reasonable person of the truth of the declared premise." Barker, 127 Wn. App. at 592. Unchallenged findings are verities on appeal. Fuller v. Emp't Sec. Dep't, 52 Wn. App. 603, 605, 762 P.2d 367 (1988). We view the evidence and reasonable inferences therefrom in the light most favorable to the party who prevailed at the administrative proceeding below. Kirby v. Emp't Sec. Dep't, 185 Wn. App. 706, 713, 342 P.3d 1151 (2014), review denied, 183 Wn.2d 1010, 352 P.3d 188 (2015).

We review de novo questions of law. Tapper, 122 Wn.2d at 403. We give substantial weight to the agency's interpretation of the statute it administers. Smith v. Emp't Sec. Dep't, 155 Wn. App. 24, 32, 266 P.3d 263 (2010).

Whether a claimant engaged in misconduct is a mixed question of law and fact. Tapper, 122 Wn.2d at 402. Accordingly, this court determines the law independently and then applies the law to the facts as found by the agency. Hamel v. Emp't Sec. Dep't, 93 Wn. App. 140, 145, 966 P.2d 1282 (1998).

Denial of Unemployment Benefits

Christner argues that the Commissioner erroneously concluded that she is disqualified from receiving unemployment benefits because she committed disqualifying misconduct under RCW 50.04.294(1)(b). We disagree.

The Employment Security Act, Title 50 RCW, exists to provide compensation to individuals who are involuntarily unemployed "through no fault of their own." RCW 50.01.010. An individual is disqualified from receiving unemployment benefits if he or she is discharged for misconduct connected with his or her work. RCW 50.20.066(1).

RCW 50.04.294(1) provides a non-exhaustive list of "[m]isconduct." Under RCW 50.04.294(1)(b), misconduct includes "[d]eliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee."

The Commissioner concluded that Christner committed misconduct under this subsection because her conduct "evinced a deliberate violation and disregard of standards of behavior which an employer has the right to expect of an employee."[7] Adopted findings of fact 5, 6, and 7 support the Commissioner's conclusion.[8]

In finding of fact 5, the Commissioner found:

> On September 26, 2013, [Christner] received a final warning for repeatedly requesting time off on short or no notice. The claimant did not disclose to the employer that she was requesting time off to participate in interviews for other employers in addition to requesting time off due to illness. The employer believed that all of the requests for time off were due to illness.[9]

This finding of fact is supported by Bundy's and Christner's testimony. Bundy testified that WCPM's policy required two weeks' advance notice for time off requests. She testified that Christner would generally give about one week's notice, which was not adequate when the requests were on a regular basis. Bundy believed that Christner's requests were only for medical reasons. Bundy testified that she had conversations with Christner about needing at least two weeks' notice, that she gave Christner verbal and written warnings, and that she made it "very clear that these accommodations were becoming very, very difficult

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[7] CP at 178.
[8] Christner assigns error to these findings of fact, but they are supported by substantial evidence in the record.
[9] CP at 162.

. . . that this was becoming an issue."[10]

Christner confirmed that she received a final warning[11] from Bundy by e-mail on September 26. In relevant part, the e-mail stated: "I realize you have some health conditions currently and are needing to go to the doctor often; however, this is becoming very difficult with scheduling, especially when there is not adequate time given prior to the request."[12]

Overall, Bundy's and Christner's testimony reveals that WCPM made it clear to Christner that her repeated requests for time off on short notice posed difficulties for WCPM. Their testimony also reveals that WCPM made it clear that it expected Christner would not repeatedly request time off on short notice while she was on notice of the hardships it created.

In finding of fact 6, the Commissioner found:

> [Christner's] repeated requests for time off created a hardship on the employer and staff because the employer would have to find someone to cover [Christner's] position on short or no notice from the claimant.[13]

This finding of fact is supported by the September 26 e-mail and testimony from WCPM employees. The September 26 e-mail stated that Christner's requests were "very difficult with scheduling, especially when there is not adequate time given prior to the request."[14] Bundy testified that a request on

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[10] CP at 97, 99.
[11] Christner argues that the Commissioner "erroneously mischaracterized" this e-mail as a "'final warning,'" because WCPM did not put her on notice that her job was in jeopardy. Appellant's Opening Br. at 3, 38. But RCW 50.04.294(1)(b) does not require the employer to have issued a "final warning" in order to establish misconduct. Thus, the Commissioner's characterization of the communication is not material to the analysis.
[12] CP at 120.
[13] CP at 162.
[14] CP at 188.

short notice would require her to "scramble to find another receptionist for coverage" or that she would have to provide coverage herself.[15] Similarly, the Chief Executive Officer, Jae Lee, testified that short notice requests were difficult to accommodate because WCPM has six different sites and they would have to shift all of their front desk coverage.

Finally, in finding of fact 7, the Commissioner found:

> Following the final warning, [Christner] requested time off on approximately five separate occasions in a 5-week period.[16]

Christner's testimony supports this finding. Christner testified before the ALJ that between September 26 and November 1, she requested time off on five or six occasions. It is clear from the record that this finding was in reference to five occasions where Christner did not provide adequate notice. Christner testified that some of these requests concerned medical issues and others concerned potential future employment.

Taken together, these findings of fact support the Commissioner's conclusion that Christner deliberately violated a standard of behavior that WCPM had the right to expect from Christner. WCPM had the right to expect that Christner would not repeatedly request time off on short notice while she was on notice that such requests created a hardship for her employer. WCPM communicated this expectation to Christner by informing her of the difficulties it encountered when she requested time off on short notice. Following this communication, Christner continued to request time off without providing adequate notice. Based on this conduct, the Commissioner properly concluded

[15] CP at 102.
[16] CP at 162.

that Christner committed disqualifying misconduct under RCW 50.04.294(1)(b).

Christner argues that WCPM cannot show a standard of behavior it had the right to expect "[w]ithout documentary evidence of an existing policy."[17] Because she fails to cite any authority that documentary evidence is necessary to establish a "standard[] of behavior which the employer has a right to expect of an employee" under RCW 50.04.294(1)(b), we reject this argument.

Christner asserts that WCPM did not have the right to expect that she would not repeatedly request time off on short notice, because it routinely approved and accommodated her multiple short notice requests. This argument is not convincing. Notwithstanding the fact that WCPM accommodated Christner's requests, WCPM made it clear to Christner that it expected that she would not repeatedly request time off on short notice. Moreover, WCPM accommodated Christner's requests because it was under the mistaken impression that they were for medical appointments. WCPM only later found out that some of these requests were for job seeking activities. Christner cites no relevant authority that, under these circumstances, WCPM waived its objection to Christner's behavior.[18]

Christner argues that the Commissioner improperly concluded that she committed misconduct because WCPM failed to demonstrate that her short notice requests were detrimental to its operations. She contends that WCPM

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[17] App. Op. Br. at 31.

[18] Christner also asserts that WCPM waived its argument that Christner committed misconduct, because it kept her employed for two weeks after the discharge. Because she similarly fails to cite any relevant authority to support this argument, we reject it.

established only that it was "becoming difficult"[19] to accommodate her requests and acted preemptively by discharging her for "anticipated future conduct."[20] Christner's argument is not well taken. Bundy's e-mail, Bundy's testimony, and Lee's testimony make it abundantly clear that Christner's repeated requests for time off on short notice caused scheduling difficulties and were detrimental to WCPM's operations.

Christner argues that the Commissioner committed legal error when the Commissioner failed to address exceptions to misconduct contained in RCW 50.04.294(3)(a). Under RCW 50.04.294(3)(a), misconduct does not include "[i]nefficiency, unsatisfactory conduct, or failure to perform well as a result of inability or incapacity." Christner argues that because most of her absences were due to medical issues, her conduct was excused because of "inability."[21] She cites no relevant authority to support this argument. Thus, it is not persuasive.

Christner next argues that the Commissioner overlooked three procedural errors that constituted arbitrary and capricious action and violated her due process rights. Even if these arguments are properly raised, they have no merit.

First, Christner asserts that the Notice of Hearing was deficient and did not give notice of the specific statute she would have to defend against. As Christner points out, the notice did not identify RCW 50.04.294, the definitional statute that sets forth specific examples of misconduct. But the notice identified RCW 50.20.066, the misconduct statute. This citation was sufficient to put Christner on

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[19] Appellant's Opening Br. at 36.
[20] Appellant's Opening Br. at 31, 35; Appellant's Reply Br. at 6.
[21] Appellant's Opening Br. at 42.

notice that she was to defend against allegations of misconduct.

Second, Christner asserts that she was not offered the opportunity to cross-examine two witnesses. But this is not borne out by the record. Accordingly, we reject this argument.

Third, Christner asserts that two items of documentary evidence were not properly admitted and that the Commissioner should have reopened the record after receiving this evidence. Because Christner fails to support this assertion with any persuasive authority or argument, we reject it.

Finally, Christner argues that the Commissioner misinterpreted and misapplied the law to the facts of this case when the Commissioner concluded that she committed misconduct under RCW 50.04.294(1)(b).[22] She relies on the Department's *Unemployment Insurance Resource Manual*,[23] which she submitted as supplemental authority in this appeal.[24] Because this court must give substantial weight to the agency's interpretation of the statute it administers, Christner asserts that this court should give substantial weight to this manual.

This manual contains illustrative examples from court rulings and decisions of the Commissioner regarding statutes the Department administers. Relevant to this case, the manual provides the following examples of misconduct under RCW 50.04.294(1)(b): coming to work under the influence of illegal drugs

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[22] Christner also presents arguments about other subsections of RCW 50.04.294. But because the Commissioner relied only on RCW 50.04.294(1)(b) when making the misconduct determination, we do not address these other statutory provisions.
[23] Appellant's Statement of Add'l Auth. at 2.
[24] The Department urges this court to disregard the supplemental document, asserting that it is evidence not properly before this court. For purposes of analysis, we will assume that this document is properly before us.

or alcohol; stealing from the employer; disrupting the employer's operations without being provoked; "impudence, insolence, disrespectfulness, or rudeness to one's supervisor"; and discrimination or conduct that is "improper, disruptive or unwanted," such as assault and sexual attention.[25] Based on these examples, Christner asserts that misconduct under this subsection involves universal standards of behavior for which no warning or notice is required. She further contends that her behavior is not comparable to the examples in the manual and "simply does not rise to that level."[26]

We are not persuaded by this argument. The examples of misconduct in the manual are illustrative, not exhaustive. As we discussed earlier in this opinion, WCPM had the right to expect that Christner would not repeatedly request time off on short notice while she was on notice that this created a hardship for her employer. A deliberate violation and disregard of that standard of behavior constitutes misconduct under RCW 50.04.294(1)(b) and is not inconsistent with the other examples provided in the manual. The Commissioner did not misinterpret or misapply the law to the facts of this case.

Attorney Fees

Christner requests attorney fees based on RCW 50.32.160, RCW 50.32.100, and RCW 4.84.010. Because we affirm the decision of the Commissioner and Christner is not the prevailing party, we decline Christner's request for fees under these statutes.

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[25] Appellant's Statement of Additional Auth. at 4 (Emp't Sec. Dep't, Unemployment Insurance Resource Manual sec. 5440).
[26] Appellant's Supp. Br. on Limited Issues at 9.

Affirmed.

Trickey, ACJ

WE CONCUR:

Spearman, J.

Cox, J.

Appendix

B

Sarah Marie Christner
SSN: [redacted]6534
Address: 2517 Howard Ave Apt 201, Everett, Wa 98203
Phone: 206-331-6127
Docket #: 012014-00054

I disagree with the determination notice from the Office of Administrative Hearings denying me benefits due to misconduct. I would like to file an appeal.

On December 4th 2013, the Employment Security Department's Determination Notice states "no evidence has been provided showing your actions were a willful or deliberate disregard of your employer's rules, policies or best interests." I agree with the Employment Security Department that I did not commit misconduct (RCW 50.04.294 and WAC 192-150-200); exhibit 2.

Further, on December 27th, 2013 The Washington Center for Pain Management (WCPM) filed an appeal with the Employment Security Department; exhibit 8. In this letter they state the reasoning for their appeal "was not to establish misconduct, but rather to show that the claimant's departure was due to a voluntary quit." This indicates to me that neither I nor my former employer considered that misconduct was a factor. In fact, to me this indicates that my employer was so certain that misconduct was not a factor that they expressly wished the court to know that misconduct was not being alleged. Consequently I was surprised to read the Initial Order from this court dated January 24th, 2014, by the Office of Administrative Hearings, that "based on the issues in this case, benefits are DENIED." Findings of facts item number 11 states "The claimant was aware that this created a hardship on the employer. Accordingly, misconduct has been established and the claimant is subject to disqualification of benefits."

First and foremost among my objections to this determination is this: it seems fundamentally unfair that I be accused of one type of action and come to court prepared to defend myself against this action, only to find myself convicted of an action not alleged by my accuser. If nothing else I should have the right to prepare and defend myself against the charge of misconduct prior to being found guilty.

Second, it does not seem to me to be the purview of the Office of Administrative Hearings to act as an agent of my employer. My employer charged me with voluntary self-termination and expressly denied any charge of misconduct. I therefore fail to comprehend the verdict of guilty of misconduct.

Third, I find no reasoning provided to overturn the Employment Security Departments finding that "no evidence has been provided showing your actions were a willful or deliberate disregard of your employer's rules, policies or best interests." Was new evidence provided? What was the new evidence? What about the old evidence convinced the court that ESD's ruling was in error?

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Employment Security Dept.
Commissioner's Review Office

As far as misconduct is concerned, I would like to first state for the record that I informed the Washington Center for Pain Management that I thought I would be a good candidate for the position, but that I wanted to be upfront with them and let them know that I would also continue to seek employment in my degreed field of study. Evidentiary support can be provided to substantiate this claim as well as to show that the company elected to hire me with this understanding.

I object to the findings of fact item number 5 that states "On September 26, 2013, the claimant received a final warning for repeatedly requesting time off on short or no notice. The claimant did not disclose to the employer that she was requesting time off to participate in interviews for other employers in addition to requesting time off due to illness. The employer believed that all of the requests for time off were due to illness." This letter was read by me over the phone as Judge Knight did not have a copy but it was mailed to me by my employer several days before the hearing. My objections are due to the following:

- The e-mail I received regarding my recent requests for time off prior to that date was my first and only warning. I have never received a warning prior to this one and received no indication that this was a final warning. My supervisor Sarah Bundy gave testimony that she believed that she and I spoke regarding my requests. I vaguely recall an occasion where we did speak, but the conversation that I recall was her asking me to see if I could re-schedule an appointment. As I was, in fact, able to reschedule that appointment I promptly did so.

- The warning I did receive stated that "in the future we do request two weeks' notice for requesting time off, no exceptions." I understand the need for this and did my best to comply within the confines of my current health issues and career goals. Nowhere did this email notify me that this was to be a verbal, written and last chance warning all wrapped into one, nor did it outline any form of disciplinary action.

- I never gave my employer "no notice." In fact, this testimony was never mentioned by either party. Notices of various lengths were always given for a determination to be made on approving said request. I always gave my employer notice as soon as I was aware of the need for time off. While this did not always fall within the request for two weeks' notice, the policy also provides for those occasions "when time-off is requested without prior approval, due to an emergency or illness." I never took time off when my request was denied by my employer.

- This e-mail from Sarah Bundy states "I realize you have some health concerns currently and are needing to go to the doctor often. However this is becoming very difficult with scheduling, especially when there is not adequate time given prior to the request." This e-mail was regarding my requests for medical appointments and not for pre-employment testing. I was having increased medical concerns of a personal and private nature and was uncomfortable revealing specific confidential details to my employer. When requesting time off I informed my employer in the specified area of our clock-in and clock-out system that these requests were for

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Commissioner's Review Office

medical appointments. I never lied to my employer and told them that I was requesting time off for a medical appointment when it was for a non-medical reason. I testified to this during the hearing and my employer never questioned my testimony.

I object to the findings of fact item number 6 that states "The claimant's repeated requests for time off created a hardship on the employer and staff because the employer would have to find someone to cover the claimant's position on short or notice from the claimant." I object because my employer usually had one or two additional receptionists on a daily basis to cover for other receptionist employees at any given time. My employer had many clinics where there is usually only a staff of one front desk receptionist. However these additional front desk receptionists were "floaters". They filled in where extra help was needed. The fact that a front desk receptionist would have to travel to another location for coverage was never an issue as all of the receptionists rotated offices daily and weekly to remain familiar with all locations in case coverage was needed. In addition, on several occasions that I did request time off on short notice there was no concern presented from my supervisor, Sarah Bundy, that approving these requests was even an issue. They were approved and coverage was readily available. On the occasion that I was asked to reschedule an appointment I complied.

Since I informed my employer of my intent to continue to seek employment in my field of study before I was hired, I do not believe that my continued requests for time off were under willful or wanted disregard of the rights, title and interests of the employer. I was forthright in my intent and the company, in full knowledge of my intent, decided nonetheless to hire me. The policy states that the intent is "To insure that absences will be scheduled in advance whenever possible." Under every other request for time off except for the times when I was unable to give an adequate two weeks' notice I gave substantial notice because I was able to do so. The times when I gave less than two weeks' notice I gave notice as soon as possible, as noted previously.

The additional requests for time off under findings of fact item number 7, which was an estimate, where for both medical and pre-employment testing. It is important to consider the availability of other businesses when I was normally scheduled for work. I worked from the hours of 0730 to 1630 Monday through Friday. My doctors' offices are only open from the earliest of 0700 to 1700 Monday through Friday. Due to my increased medical concerns and my needs for an immediate appointment, it required me to request time off during work hours and with short notice. This should not be held against me and displayed as intent to disregard my employers' policy. I cannot serve my employer to the best of my ability while in ill health. In fact, my employers' policy manual states that it is the supervisor's responsibility to "send anyone home that appears to be too ill to work."

In regards to my testing with the Snohomish County Corrections Department, I participated in pre-employment testing through the Snohomish County Human Resources office. Their hours of operation are from 0800 to 1700 Monday through Friday. Employment within this is field is highly coveted. Therefore, the testing process is quite lengthy requiring a written exam and at least one interview. I am currently choice number two for the position of Control Room Officer with the Snohomish County Department of Corrections. When participating in the testing process the Human

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Resources Department notifies chosen applicants of an exam/interview date. The date offered was the only date that they will be participating in these appointments. More often than not Snohomish County Human Resources gave me less than two weeks' notice of the upcoming events. The applicant is then able to choose from a number of times during their business hours to participate in the testing process. I always tried to choose a time that would be most convenient for my employer, usually either during the start of a work day or at the end of a work day.

In summation, my requests for time off with short notice that were deemed problematic by my employer are understandable. Absenteeism is a legitimate concern for business. That being said, choosing to participate in timely medical treatment does not demonstrate a willful or wanton disregard of my employers' concerns. In addition, I did inform my employer of my intent to seek employment prior to being hired. That I was hired anyway constitutes a willingness on their part to accept that fact. That I was true to my word does not seem to demonstrate a willful or wanton disregard of my employers' concerns. I never lied to my employer about what my requests for time off were regarding. I usually was able to provide my employer with adequate notice for staffing, but was in fact occasionally unable to provide such accommodation. My work performance itself was exemplary. I take pride in my work ethic and would never wantonly or willfully cause harm to my employer. That I was forced into termination saddens me. That I am now being considered as having deliberately harmed the interests of my employer greatly disturbs me and I do not think in any way is supported by the facts.

Sarah Carothers 17FEB2014

Appendix C

RCW 50.04.294

Misconduct—Gross misconduct.

With respect to claims that have an effective date on or after January 4, 2004:

(1) "Misconduct" includes, but is not limited to, the following conduct by a claimant:

(a) Willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee;

(b) Deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee;

(c) Carelessness or negligence that causes or would likely cause serious bodily harm to the employer or a fellow employee; or

(d) Carelessness or negligence of such degree or recurrence to show an intentional or substantial disregard of the employer's interest.

(2) The following acts are considered misconduct because the acts signify a willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee. These acts include, but are not limited to:

(a) Insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions or instructions of the employer;

(b) Repeated inexcusable tardiness following warnings by the employer;

(c) Dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;

(d) Repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;

(e) Deliberate acts that are illegal, provoke violence or violation of laws, or violate the collective bargaining agreement. However, an employee who engages in lawful union activity may not be disqualified due to misconduct;

(f) Violation of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or

(g) Violations of law by the claimant while acting within the scope of employment that substantially affect the claimant's job performance or that substantially harm the employer's ability to do business.

(3) "Misconduct" does not include:

(a) Inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

(b) Inadvertence or ordinary negligence in isolated instances; or

(c) Good faith errors in judgment or discretion.

(4) "Gross misconduct" means a criminal act in connection with an individual's work for which the individual has been convicted in a criminal court, or has admitted committing, or conduct connected with the individual's work that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of the employer or a fellow employee.

[2006 c 13 § 9. Prior: 2003 2nd sp.s. c 4 § 6.]

NOTES:

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW **50.20.120**.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

WAC 192-150-205

Definitions—Misconduct and gross misconduct—RCW 50.04.294 and 50.20.066.

For purposes of this chapter, the following definitions will apply:

(1) "Willful" means intentional behavior done deliberately or knowingly, where you are aware that you are violating or disregarding the rights of your employer or a co-worker.

(2) "Wanton" means malicious behavior showing extreme indifference to a risk, injury, or harm to another that is known or should have been known to you. It includes a failure to act when there is a duty to do so, knowing that injury could result.

(3) "Carelessness" and "negligence" mean failure to exercise the care that a reasonably prudent person usually exercises.

(4) "Serious bodily harm" means bodily injury which creates a probability of death, or which causes significant permanent disfigurement, or which causes a significant loss or impairment of the function of any bodily part or organ.

(5) "Criminal act" means any act classified as a felony, gross misdemeanor, or misdemeanor under state or federal law.

(6) "Flagrant" means conspicuously bad or offensive behavior showing contemptuous disregard for the law, morality, or the rights of others. This blatant behavior must be so obviously inconsistent with what is right or proper that it can neither escape notice nor be condoned.

[Statutory Authority: RCW **50.12.010**, **50.12.040**, **50.12.042**. WSR 05-01-076, § 192-150-205, filed 12/9/04, effective 1/9/05.]

WAC 192-150-210

Willful or wanton disregard—RCW 50.04.294 (1)(a) and (2).

(1) "Repeated inexcusable tardiness" means repeated instances of tardiness that are unjustified or that would not cause a reasonably prudent person in the same circumstances to be tardy. Your employer must have warned you at least twice, either verbally or in writing, about your tardiness, and violation of such warnings must have been the immediate cause of your discharge.

(2) "Dishonesty related to employment" means the intent to deceive the employer on a material fact. It includes, but is not limited to, making a false statement on an employment application and falsifying the employer's records.

(3) "Repeated and inexcusable absences" means repeated absences that are unjustified or that would not cause a reasonably prudent person in the same circumstances to be absent. Previous warnings from your employer are not required, but your repeated absences must have been the immediate cause of your discharge.

(4) A company rule is reasonable if it is related to your job duties, is a normal business requirement or practice for your occupation or industry, or is required by law or regulation.

(5) The department will find that you knew or should have known about a company rule if you were provided an employee orientation on company rules, you were provided a copy or summary of the rule in writing, or the rule is posted in an area that is normally frequented by you and your co-workers, and the rule is conveyed or posted in a language that can be understood by you.

(6) You are considered to be acting within your "scope of employment" if you are:

(a) Representing your employer in an official capacity;

(b) On your employer's property whether on duty or not;

(c) Operating equipment under your employer's ownership or control;

(d) Delivering products or goods on behalf of your employer; or

(e) Acting in any other capacity at the direction of your employer.

[Statutory Authority: RCW **50.12.010**, **50.12.040**, **50.12.042**. WSR 05-01-076, § 192-150-210, filed 12/9/04, effective 1/9/05.]

RCW 50.20.066

Disqualification from benefits due to misconduct—Cancellation of hourly wage credits due to gross misconduct.

With respect to claims that have an effective date on or after January 4, 2004:

(1) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has been discharged or suspended for misconduct connected with his or her work and thereafter for ten calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to ten times his or her weekly benefit amount. Alcoholism shall not constitute a defense to disqualification from benefits due to misconduct.

(2) An individual who has been discharged from his or her work because of gross misconduct shall have all hourly wage credits based on that employment or six hundred eighty hours of wage credits, whichever is greater, canceled.

(3) The employer shall notify the department of a felony or gross misdemeanor of which an individual has been convicted, or has admitted committing to a competent authority, not later than six months following the admission or conviction.

(4) The claimant shall disclose any conviction of the claimant of a work-connected felony or gross misdemeanor occurring in the previous two years to the department at the time of application for benefits.

(5) All benefits that are paid in error based on this section are recoverable, notwithstanding RCW 50.20.190 or **50.24.020** or any other provisions of this title.

[**2006 c 13 § 13.** Prior: 2003 2nd sp.s. c 4 § 9.]

NOTES:

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW **50.20.120**.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

RCW 50.36.010

Violations generally.

(1) It shall be unlawful for any person to knowingly give any false information or withhold any material information required under the provisions of this title.

(2) Any person who violates any of the provisions of this title which violation is declared to be unlawful, and for which no contrary provision is made, is guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days.

(3) Any person who in connection with any compromise or offer of compromise willfully conceals from any officer or employee of the state any property belonging to an employing unit which is liable for contributions, interest, or penalties, or receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement relating to the financial condition of the employing unit which is liable for contributions, is guilty of a gross misdemeanor and shall upon conviction thereof be fined not more than five thousand dollars or be imprisoned for up to three hundred sixty-four days, or both.

(4) The penalty prescribed in this section shall not be deemed exclusive, but any act which shall constitute a crime under any law of this state may be the basis of prosecution under such law notwithstanding that it may also be the basis for prosecution under this section.

[**2011 c 96 § 43; 2003 c 53 § 279; 1953 ex.s. c 8 § 22; 1945 c 35 § 180**; Rem. Supp. 1945 § 9998-319. Prior: **1943 c 127 § 12; 1941 c 253 § 13.**]

NOTES:

Findings—Intent—2011 c 96: See note following RCW **9A.20.021**.

Intent—Effective date—2003 c 53: See notes following RCW **2.48.180**.

RCW 50.36.020

Violations by employers.

(1) Any person required under this title to collect, account for and pay over any contributions imposed by this title, who willfully fails to collect or truthfully account for and pay over such contributions, and any person who willfully attempts in any manner to evade or defeat any contributions imposed by this title or the payment thereof, is guilty of a gross misdemeanor and shall, in addition to other penalties provided by law, upon conviction thereof, be fined not more than five thousand dollars, or imprisoned for up to three hundred sixty-four days, or both, together with the costs of prosecution.

(2) The term "person" as used in this section includes an officer or individual in the employment of a corporation, or a member or individual in the employment of a partnership, who as such officer, individual or member is under a duty to perform the act in respect of which the violation occurs. A corporation may likewise be prosecuted under this section and may be subjected to fine and payment of costs of prosecution as prescribed herein for a person.

[**2011 c 96 § 44; 2003 c 53 § 280; 1953 ex.s. c 8 § 23; 1945 c 35 § 181**; Rem. Supp. 1945 § 9998-320. Prior: **1943 c 127 § 12; 1941 c 253 § 13.**]

NOTES:

Findings—Intent—2011 c 96: See note following RCW **9A.20.021**.

Intent—Effective date—2003 c 53: See notes following RCW **2.48.180**.

*Crimes and punishment: Titles **9, 9A** RCW.*

RCW 50.36.030

Concealing cause of discharge.

Employing units or agents thereof supplying information to the employment security department pertaining to the cause of a benefit claimant's separation from work, which cause stated to the department is contrary to that given the benefit claimant by such employing unit or agent thereof at the time of his or her separation from the employing unit's employ, shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days.

[2010 c 8 § 13040; 1951 c 265 § 13.]

NOTES:

Severability—1951 c 265: See note following RCW **50.98.070**.

RCW 34.05.434

Notice of hearing.

(1) The agency or the office of administrative hearings shall set the time and place of the hearing and give not less than seven days advance written notice to all parties and to all persons who have filed written petitions to intervene in the matter.

(2) The notice shall include:

(a) Unless otherwise ordered by the presiding officer, the names and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their representatives;

(b) If the agency intends to appear, the mailing address and telephone number of the office designated to represent the agency in the proceeding;

(c) The official file or other reference number and the name of the proceeding;

(d) The name, official title, mailing address, and telephone number of the presiding officer, if known;

(e) A statement of the time, place and nature of the proceeding;

(f) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(g) A reference to the particular sections of the statutes and rules involved;

(h) A short and plain statement of the matters asserted by the agency; and

(i) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with this chapter.

(3) If the agency is unable to state the matters required by subsection (2)(h) of this section at the time the notice is served, the initial notice may be limited to a statement of the issues involved. If the proceeding is initiated by a person other than the agency, the initial notice may be limited to the inclusion of a copy of the initiating document. Thereafter, upon request, a more definite and detailed statement shall be furnished.

(4) The notice may include any other matters considered desirable by the agency.

(5) The notice may be served on a party via electronic distribution, with a party's agreement.

[2013 c 110 § 1; 1988 c 288 § 409; 1980 c 31 § 1; 1967 c 237 § 9; 1959 c 234 § 9. Formerly RCW **34.04.090**.]

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle C. Employment Taxes (Refs & Annos)
Chapter 23. Federal Unemployment Tax Act (Refs & Annos)

26 U.S.C.A. § 3304

§ 3304. Approval of State laws

Effective: February 22, 2012
Currentness

(a) Requirements.--The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that--

(1) all compensation is to be paid through public employment offices or such other agencies as the Secretary of Labor may approve;

(2) no compensation shall be payable with respect to any day of unemployment occurring within 2 years after the first day of the first period with respect to which contributions are required;

(3) all money received in the unemployment fund shall (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305(b)) immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act (42 U.S.C. 1104);

(4) all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b); except that--

(A) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration;

(B) the amounts specified by section 903(c)(2) or 903(d)(4) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices;

(C) nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance, or

the withholding of Federal, State, or local individual income tax, if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor;

(D) amounts shall be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act;

(E) amounts may be withdrawn for the payment of short-time compensation under a short-time compensation program (as defined under section 3306(v));

(F) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t)); and

(G) with respect to amounts of covered unemployment compensation debt (as defined in section 6402(f)(4)) collected under section 6402(f)--

(i) amounts may be deducted to pay any fees authorized under such section; and

(ii) the penalties and interest described in section 6402(f)(4)(B) may be transferred to the appropriate State fund into which the State would have deposited such amounts had the person owing the debt paid such amounts directly to the State;

(5) compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6)(A) compensation is payable on the basis of service to which section 3309(a)(1) applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to such law; except that--

(i) with respect to services in an instructional, research, or principal administrative capacity for an educational institution to which section 3309(a)(1) applies, compensation shall not be payable based on such services for any week commencing during the period between two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a

contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms,

(ii) with respect to services in any other capacity for an educational institution to which section 3309(a)(1) applies--

(I) compensation payable on the basis of such services may be denied to any individual for any week which commences during a period between 2 successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that

(II) if compensation is denied to any individual for any week under subclause (I) and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of subclause (I),

(iii) with respect to any services described in clause (i) or (ii), compensation payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess,

(iv) with respect to any services described in clause (i) or (ii), compensation payable on the basis of services in any such capacity shall be denied as specified in clauses (i), (ii), and (iii) to any individual who performed such services in an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions,

(v) with respect to services to which section 3309(a)(1) applies, if such services are provided to or on behalf of an educational institution, compensation may be denied under the same circumstances as described in clauses (i) through (iv), and

(vi) with respect to services described in clause (ii), clauses (iii) and (iv) shall be applied by substituting "may be denied" for "shall be denied", and

(B) payments (in lieu of contributions) with respect to service to which section 3309(a)(1) applies may be made into the State unemployment fund on the basis set forth in section 3309(a)(2);

(7) an individual who has received compensation during his benefit year is required to have had work since the beginning of such year in order to qualify for compensation in his next benefit year;

(8) compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work);

(9)(A) compensation shall not be denied or reduced to an individual solely because he files a claim in another State (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another State (or such a contiguous country) at the time he files a claim for unemployment compensation;

(B) the State shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under the State law with his wages and employment covered under the unemployment compensation law of other States which are approved by the Secretary of Labor in consultation with the State unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations. Any such arrangement shall include provisions for (i) applying the base period of a single State law to a claim involving the combining of an individual's wages and employment covered under two or more State laws, and (ii) avoiding duplicate use of wages and employment by reason of such combining;

(10) compensation shall not be denied to any individual by reason of cancellation of wage credits or total reduction of his benefit rights for any cause other than discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income;

(11) extended compensation shall be payable as provided by the Federal-State Extended Unemployment Compensation Act of 1970;

(12) no person shall be denied compensation under such State law solely on the basis of pregnancy or termination of pregnancy;

(13) compensation shall not be payable to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods);

(14)(A) compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act),

(B) any data or information required of individuals applying for compensation to determine whether compensation is not payable to them because of their alien status shall be uniformly required from all applicants for compensation, and

(C) in the case of an individual whose application for compensation would otherwise be approved, no determination by the State agency that compensation to such individual is not payable because of his alien status shall be made except upon a preponderance of the evidence;

(15)(A) subject to subparagraph (B), the amount of compensation payable to an individual for any week which begins after March 31, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week except that--

(i) the requirements of this paragraph shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if--

(I) such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period employer or chargeable employer (as determined under applicable law), and

(II) in the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment, and

(ii) the State law may provide for limitations on the amount of any such a reduction to take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment, and

(B) the amount of compensation shall not be reduced on account of any payments of governmental or other pensions, retirement or retired pay, annuity, or other similar payments which are not includible in the gross income of the individual for the taxable year in which it was paid because it was part of a rollover distribution;

(16)(A) wage information contained in the records of the agency administering the State law which is necessary (as determined by the Secretary of Health and Human Services in regulations) for purposes of determining an individual's eligibility for assistance, or the amount of such assistance, under a State program funded under part A of title IV of the Social Security Act, shall be made available to a State or political subdivision thereof when such information is specifically requested by such State or political subdivision for such purposes,

(B) wage and unemployment compensation information contained in the records of such agency shall be furnished to the Secretary of Health and Human Services (in accordance with regulations promulgated by such Secretary) as necessary for the purposes of the National Directory of New Hires established under section 453(i) of the Social Security Act, and

(C) such safeguards are established as are necessary (as determined by the Secretary of Health and Human Services in regulations) to insure that information furnished under subparagraph (A) or (B) is used only for the purposes authorized under such subparagraph;

(17) any interest required to be paid on advances under title XII of the Social Security Act shall be paid in a timely manner and shall not be paid, directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) by such State from amounts in such State's unemployment fund;

(18) Federal individual income tax from unemployment compensation is to be deducted and withheld if an individual receiving such compensation voluntarily requests such deduction and withholding; and

(19) all the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

(b) Notification.--The Secretary of Labor shall, upon approving such law, notify the governor of the State of his approval.

(c) Certification.--On October 31 of each taxable year the Secretary of Labor shall certify to the Secretary of the Treasury each State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to the 12-month period ending on such October 31 failed to comply substantially with any such provision in such subsection. No finding of a failure to comply substantially with any provision in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law (1) until all administrative review provided for under the laws of the State has been exhausted, or (2) with respect to which the time for judicial review provided by the laws of the State has not expired, or (3) with respect to which any judicial review is pending. On October 31 of any taxable year, the Secretary of Labor shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by law to be included therein (including provisions relating to the Federal-State Extended Unemployment Compensation Act of 1970 (or any amendments thereto) as required under subsection (a)(11)), or has, with respect to the twelve-month period ending on such October 31, failed to comply substantially with any such provision.

(d) Notice of noncertification.--If at any time the Secretary of Labor has reason to believe that a State whose law he has previously approved may not be certified under subsection (c), he shall promptly so notify the governor of such State.

(e) Change of law during 12-month period.--Whenever--

(1) any provision of this section, section 3302, or section 3303 refers to a 12-month period ending on October 31 of a year, and

(2) the law applicable to one portion of such period differs from the law applicable to another portion of such period,

then such provision shall be applied by taking into account for each such portion the law applicable to such portion.

(f) Definition of institution of higher education.--For purposes of subsection (a)(6), the term "institution of higher education" means an educational institution in any State which--

(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized within such State to provide a program of education beyond high school;

(3) provides an educational program for it which awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 443; Aug. 10, 1970, Pub.L. 91-373, Title I, §§ 104(a), 108(a), 121(a), 131(b)(2), 142(f) to (h), Title II, § 206, 84 Stat. 697, 701, 704, 707, 708, 712; Oct. 4, 1976, Pub.L. 94-455, Title XIX, §§ 1903(a)(14), 1906(b)(13)(C), (E), 90 Stat. 1809, 1834; Oct. 20, 1976, Pub.L. 94-566, Title I, § 115(c)(1), (5), Title III, §§ 312(a), (b), 314(a), Title V, § 506(b), 90 Stat. 2670, 2671, 2679, 2680, 2687; Apr. 12, 1977, Pub.L. 95-19, Title III, § 302(a), (c), (e), 91 Stat. 44, 45; Nov. 12, 1977, Pub.L. 95-171, § 2(a), 91 Stat. 1353; Dec. 20, 1977, Pub.L. 95-216, Title IV, § 403(b), 91 Stat. 1561; Sept. 26, 1980, Pub.L. 96-364, Title IV, § 414(a), 94 Stat. 1310; Aug. 13, 1981, Pub. L. 97-35, Title XXIV, § 2408(a), 95 Stat. 880; Sept. 3, 1982, Pub.L. 97-248, Title I, § 193(a), 96 Stat. 408; Apr. 20, 1983, Pub.L. 98-21, Title V, §§ 515(b), 521(a), 523(a), 97 Stat. 147, 148; Apr. 7, 1986, Pub.L. 99-272, Title XII, § 12401(b)(1), 100 Stat. 297; Oct. 22, 1986, Pub.L. 99-514, Title XVIII, § 1899A(43), 100 Stat. 2960; Nov. 29, 1990, Pub.L. 101-649, Title I, § 162(e)(4), 104 Stat. 5011; Nov. 15, 1991, Pub.L. 102-164, Title III, § 302(a), 105 Stat. 1059; July 3, 1992, Pub.L. 102-318, Title IV, § 401(a)(1), 106 Stat. 298; Dec. 8, 1993, Pub.L. 103-182, Title V, § 507(b)(1), 107 Stat. 2154; Dec. 8, 1994, Pub.L. 103-465, Title VII, § 702(b), (c)(1), 108 Stat. 4997; Aug. 22, 1996, Pub.L. 104-193, Title I, § 110(l)(1), formerly § 110(l)(2), Title III, § 316(g)(2), 110 Stat. 2173, 2218; renumbered § 110(l)(1), Aug. 5, 1997, Pub.L. 105-33, Title V, § 5514(a)(2), 111 Stat. 620; Mar. 9, 2002, Pub.L. 107-147, Title II, § 209(d)(1), 116 Stat. 33; Aug. 17, 2006, Pub.L. 109-280, Title XI, § 1105(a), 120 Stat. 1060; Sept. 30, 2008, Pub.L. 110-328, § 3(c), 122 Stat. 3572; Dec. 23, 2008, Pub.L. 110-458, Title I, § 111(b), 122 Stat. 5113; Pub.L. 112-96, Title II, §§ 2103(a), 2161(b)(1)(A), Feb. 22, 2012, 126 Stat. 161, 172.)

Notes of Decisions (122)

26 U.S.C.A. § 3304, 26 USCA § 3304
Current through P.L. 114-165.

End of Document

PROOF OF SERVICE

The undersigned attorney, Joy Lockerby, declares under penalty of perjury under the laws of the State of Washington that on this day, July 5, 2016, a true and correct copy of the foregoing *Petition for Review by Sarah Christner* was filed with the court and served to counsel of record and interested parties as indicated below:

Leah Harris, Assistant Attorney General Attorney General's Office, Licensing and Administrative Law Division 800 Fifth Avenue, Suite 2000 Seattle, WA 98104 Phone: (206) 389-2797 Fax: (360) 664-0174 Email: LeahH1@atg.wa.gov Email: lalseaef@atg.wa.gov *Attorney for Respondent*	☑ ☐ ☑ ☐ ☐ ☐	Via Legal Messenger Via Fax Via Email Via U.S. Mail Via Electronic Filing Via Hand Delivery
Commissioner's Review Office Employment Security Department Attn: Agency Records Center 212 Maple Park Drive PO Box 9046 Olympia, WA 98507 *Respondent*	☐ ☐ ☐ ☑ ☐ ☐	Via Legal Messenger Via Fax Via Email Via U.S. Mail Via Electronic Filing Via Hand Delivery
Washington Center for Pain Management, PLLC Attn: Jacky Hong, Registered Agent 1900 116th Ave NE, Ste 201 Bellevue, WA 98004-3013 *Interested employer*	☐ ☐ ☐ ☑ ☐ ☐	Via Legal Messenger Via Fax Via Email Via U.S. Mail Via Electronic Filing Via Hand Delivery

CLERK: (different address)

Clerk, Court of Appeals Division I One Union Square 600 University Street Seattle, WA 98101-1176 Phone: 206-464-7750 Fax: 206-389-2613	☐ ☐ ☐ ☐ ☐ ☑	Via Legal Messenger Via Fax Via Email Via U.S. Mail Via Electronic Filing Via Hand Delivery
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DATED this 5th day of July, 2016.

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