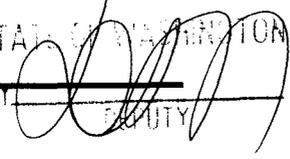


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NO. 33705-3-II

STATE OF WASHINGTON
BY 
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**COURT OF APPEALS FOR DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON
EMPLOYMENT SECURITY DEPARTMENT,

Appellant,

v.

SARA D. SPAIN,

Respondent.

APPELLANT'S BRIEF

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ORIGINAL

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I. INTRODUCTION

The Appellant, Employment Security Department (Department), appeals a Thurston County Superior Court order reversing a Commissioner's Decision which denied Sara D. Spain (Spain) unemployment benefits because she voluntarily quit her job without good cause, disqualifying her from benefits under RCW 50.20.050. The Commissioner's Decision was supported by substantial evidence and was in accordance with the law. Therefore, the Superior Court's order should be reversed and the Commissioner's Decision affirmed.

II. ASSIGNMENT OF ERROR

(1) The Thurston County superior court erred in ruling that good cause to voluntarily quit employment is not limited to the ten criteria set forth in RCW 50.20.050(2)(b).

III. STATEMENT OF THE ISSUES

(1) Did the 2003 amendments to RCW 50.20.050 create in RCW 50.20.050(2)(b) an exclusive list of circumstances that constitute good cause for quitting work?

(2) Did Spain quit her job for good cause when it is undisputed her reason for quitting does not meet the RCW 50.20.050(2)(b) definition of good cause?

IV. STATEMENT OF THE CASE

Spain was employed by Peterson Northwest Inc., a roofing company. Commissioner's Record (CR) 1, 2, 15, 46(1).¹ She assisted the employer with general operations and with payroll. CR 9, 20, 46(1). She worked from February 6, 2004 until she voluntarily quit on June 18, 2004. CR 8, 9, 46(2).

After quitting, Spain applied for unemployment benefits. She told the Department that she quit due to the "mind games" of her employer. CR 41, 44. The Department denied Spain unemployment benefits, finding that she lacked good cause for quitting because her reason for quitting did not fall within the criteria set forth in RCW 50.20.050(2). CR 31-35.

Spain appealed the determination to the Office of Administrative Hearings (OAH). CR 38, 46. The employer did not appear and Spain provided the only testimony. CR 2, 46. Spain testified she quit because of the way the company president treated her, which the Administrative Law Judge (ALJ) concluded was unprofessional, demeaning, and unjustified. CR 49[5].²

The ALJ concluded Spain did not have good cause to terminate her employment because her reason for quitting did not fall within RCW 50.20.050(2)(b), which is an exhaustive list. CR 48[4], 49[5].

¹ The number in parentheses represents the specific finding of fact made by the Administrative Law Judge and adopted by the Commissioner. CR 85-87.

² The number in brackets represents the conclusion made by the Administrative Law Judge and adopted by the Commissioner. CR 85-87.

Spain appealed to the Commissioner. CR 60-62. The Commissioner's delegate³ adopted the findings of fact and conclusions of law of the ALJ. CR 62-63.

Spain then appealed to the Thurston County Superior Court, challenging only the Commissioner's determination that the RCW 50.20.050(2)(b) list is exhaustive. She did not challenge the Commissioner's determination that her reason for quitting did not fall within RCW 50.20.050(2)(b). The court affirmed the Commissioner's determination that Spain did not meet any of the reasons for quitting set forth in RCW 50.20.050(2)(b),⁴ but reversed the Commissioner's determination that good cause is limited to the ten criteria set forth in RCW 50.20.050(2)(b). The court remanded the matter to the Department to determine whether Spain had good cause to quit under RCW 50.20.050(2)(a).

The Department timely appealed to this Court, seeking reversal of the Superior Court's order that good cause is not limited to the ten criteria set forth in RCW 50.20.050(2)(b).

V. STANDARD OF REVIEW

Judicial review is governed by the Washington Administrative Procedure Act (APA). RCW 34.05.510; RCW 50.32.120. The Court of

³ Hereinafter "Commissioner."

⁴ Spain has not appealed the Superior Court's determination that her reason for quitting did not meet any of the reasons found in RCW 50.20.050(2)(b).

Appeals “sits in the same position as the superior court” on review of the agency action under the APA. Tapper v. Empl. Sec. Dep’t, 122 Wn.2d 397, 402, 858 P.2d 494 (1993). The Commissioner’s Decision is considered *prima facie* correct and the party challenging it has the burden of proving otherwise. RCW 34.05.570(1)(a); RCW 50.32.150; Robinson v. Empl. Sec. Dep’t, 84 Wn. App. 774, 777, 930 P.2d 926 (1996) (reversed on a different issue); Safeco Ins. Co. v. Meyering, 102 Wn.2d 385, 391, 687 P.2d 195 (1984); Employees of Intalco Aluminum Corp. v. Empl. Sec. Dep’t, 128 Wn. App. 121, 126, 114 P.3d 675 (2005). Spain does not challenge the Commissioner’s Findings of Fact. Therefore, they are verities on appeal. Tapper, 122 Wn.2d at 407; Fuller v. Empl. Sec. Dep’t, 52 Wn. App. 603, 606, 762 P.2d 367 (1988). The Court’s review, then, is limited to whether the findings of fact support the conclusion of law and judgment. In re Discipline of Brown, 94 Wn. App. 7, 13, 972 P.2d 101 (1999) (citing In re Perry, 31 Wn. App. 268, 269, 641 P.2d 178 (1982)).

Questions of law are reviewed *de novo* under the error of law standard. Penick v. Empl. Sec. Dep’t, 82 Wn. App. 30, 37, 917 P.2d 136 (1996); Tapper, 122 Wn.2d at 403. The Court must give substantial weight to an agency’s construction of statutory language and legislative intent where, as here, the statute is within the agency’s area of expertise. Macey v. Empl. Sec. Dep’t, 110 Wn.2d 308, 313, 752 P.2d 372 (1988);

Wm. Dickson Co. v. Puget Sound Air Pollution Control Agency, 81 Wn. App. 403, 407, 914 P.2d 750 (1996).

VI. ARGUMENT

A. A Person Who Quits A Job Without Good Cause Is Disqualified From Receiving Unemployment Benefits

The Employment Security Act (“Act”) provides compensation to individuals who are “involuntarily” unemployed “through no fault of their own.” RCW 50.01.010; Tapper, 122 Wn.2d at 408. The Act requires the reason for the unemployment be external and apart from the claimant. Cowles Pub’g Co. v. Dep’t of Empl. Sec., 15 Wn. App. 590, 593, 550 P.2d 712 (1976). Consequently, one who leaves employment voluntarily without good cause⁵ may not receive unemployment benefits. RCW 50.20.050(1)(a); RCW 50.20.050(2)(a). The burden of establishing “good cause” for quitting rests on the employee. In re Townsend, 54 Wn.2d 532, 534, 341 P.2d 877 (1959).

For unemployment claims filed before 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 left work voluntarily without good cause
....

⁵ “Good cause” is a statutory term and must be given its statutory definition. *See generally* Grier v. Empl. Sec. Dep’t 43 Wn. App. 92, 95 715 P.2d 534 (1986) (“good cause” is a statutory term); Tenino Aerie v. Grand Aerie, 148 Wn.2d 224, 239, 59 P.3d 665 (2002) (Legislative definitions provided in a statute are controlling).

(3) In determining under this subsection whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies

RCW 50.20.050(1) (2002) and RCW 50.20.050(3) (2002). Now codified as RCW 50.20.050(1)(a) and RCW 50.20.050(1)(c).

To show good cause, a claimant had to demonstrate:

- (a) That he or she left work primarily because of a work connected factor(s); and
- (b) That said work connected factor(s) was (were) of such a compelling nature as to cause a reasonably prudent person to leave his or her employment; and
- (c) That he or she first exhausted all reasonable alternatives prior to termination [though employee need not perform futile acts].

WAC 192-16-009. *See also Terry v. Empl. Sec. Dep't*, 82 Wn. App.745, 750, 919 P.2d 111 (1996).

The 2003 Legislature amended the statute, expressly changing the criteria for good cause. The Legislature removed discretion to determine good cause on a case-by-case basis. The Legislature established, in place of discretion, a discrete list of criteria that constitute good cause. Laws of 2003, 2nd Sp. Sess., ch. 4, § 4.⁶ The statute now provides:

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

⁶ A copy of RCW 50.20.050 is attached.

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause. . . .

(b) An individual is not disqualified from benefits under (a) of this subsection when:

(i) He or she has left work to accept a bona fide offer of bona fide work . . . ;

(ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family

(iii) He or she: (A) Left work to relocate for the spouse's employment that, due to a mandatory military transfer: (I) Is outside the existing labor market area; and (II) is in Washington or another state that, pursuant to statute, does not consider such an individual to have left work voluntarily without good cause; and (B) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

(v) The individual's usual compensation was reduced by twenty-five percent or more;

(vi) The individual's usual hours were reduced by twenty-five percent or more;

(vii) The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;

(viii) The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time; or

(x) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs.

RCW 50.20.050(2)(b).

These criteria apply to Spain's claim. It is undisputed Spain's separation did not meet any of the good cause provisions. Therefore, she was properly disqualified from receiving unemployment benefits.

B. The Legislature Intended The RCW 50.20.050(2)(b) Criteria To Be Exhaustive

Generally, statutes are to be interpreted to give effect to the Legislature's intent. Cherry v. Municipality of Metropolitan Seattle, 116 Wn.2d 794, 799, 808 P.2d 746 (1991). If a statute is unambiguous, its meaning is to be derived from the language of the statute alone. Id. If the legislative intent is not clear from the language alone, the Court will attempt to determine such intent and may resort to various tools of statutory construction, including legislative history and administrative interpretation. Id. The interpretation adopted should always be that which best advances the legislative purpose. Id.

Here, the plain language of the statute, legislative history, and the rules of statutory construction show that the RCW 50.20.050(2)(b) list was meant to be exhaustive.⁷

1. The Plain Language Of The Statute States That Good Cause Is Limited To Those Situations Listed In RCW 50.20.050(2)(b)

When a statute is unambiguous, its meaning is to be derived from the language of the statute alone. Cherry v. Municipality of Metropolitan Seattle, 116 Wn.2d 794, 799, 808 P.2d 746 (1991). Here, RCW 50.20.050(2)(b) states, “An individual is not disqualified from benefits under (a) of this subsection *when*” and then lists ten specific situations. RCW 50.20.050(2)(b) (emphasis added). “When” is defined as, “on what occasion or under what circumstances.” WEBSTER’S NEW WORLD DICTIONARY OF THE AMERICAN LANGUAGE 1618 (2nd College ed. 1976). It is also defined as, “in the event that” or “on condition that.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 2602 (1993). The plain language of the statute shows that the good cause list is exhaustive.

⁷ The issue of whether the RCW 50.20.050(2)(b) list is exhaustive is currently pending before this Court in Starr v. ESD, case No. 33003-2. Oral argument in Starr was heard on October 28, 2005.

2. Legislative History Shows Intent That Good Cause Be Limited To The RCW 50.20.050(2)(b) Criteria

Legislative bill reports and legislative bill analyses may be considered in determining the Legislature's intent. Jacques v. Sharp, 83 Wn. App. 532, 541, 922 P.2d 145 (1996); In re Sehome Park Care Center, 127 Wn.2d 774, 781, 903 P.2d 443 (1995).

Here, the Legislative history shows that the RCW 50.20.050(2)(b) list was meant to be exhaustive. The Senate Bill Report (Attachment A) and Final Bill Report (Attachment B) summarized the new law as follows:

Effective January 4, 2004, an individual may receive benefits if he or she leaves work for the following reasons:

- (1) leave to accept other work;
- (2) illness or disability of the individual or someone in the individual's immediate family;
- (3) the claimant left work to relocate for the spouse's employment that was the result of a mandatory military transfer and is in a state that does not consider the individual to have left work without good cause;
- (4) domestic violence or stalking;
- (5) reduction of 25 percent or more in compensation or hours;
- (6) change in work site that caused increased distance or difficulty of travel;
- (7) deterioration of work site safety;
- (8) illegal activities in the individual's work site or
- (9) the work violates an individual's religious convictions or sincere moral beliefs.

Attachment A and B at page 3.

The House Bill Report contains three clear statements of legislative intent. First, it summarized the purpose of the amendment by stating, “The Commissioner's discretion to determine that other work-related factors are good cause for leaving work is eliminated.” (emphasis added). Attachment C at page 6. Second, it provided, “the reasons specified in the Act as good cause for leaving work voluntarily are limited,” followed by a list of the ten reasons that are good cause for quitting. (emphasis added). Attachment C at page 6. Finally, the Brief Summary of Second Engrossed Bill states that the amendment “Narrows the reasons for ‘good cause’ quits and broadens the definition of misconduct.”⁸ (emphasis added). Attachment C at page 1. The Legislative intent is clear: Good cause to quit may only be found where the claimant meets one of the criteria listed in RCW 50.20.050(2)(b).

3. The Rules of Statutory Construction Show Intent That Good Cause Be Limited To The RCW 50.20.050(2)(b) Criteria

If the legislative intent is not clear from the plain language of the statute, the Court may determine such intent by using rules of statutory construction. Cherry v. Municipality of Metropolitan Seattle, 116 Wn.2d 794, 799, 808 P.2d 746 (1991). Here, the rules of statutory construction support the conclusion that the RCW 50.20.050(2)(b) list is exhaustive.

⁸ This is consistent with RCW 50.04.294 which says that “Misconduct” includes, but is not limited to, the following conduct by a claimant[.]”

First, when a statute is amended and a material change is made in the wording, there is a presumption that the Legislature intended to change the law. Childers v. Childers, 89 Wn.2d 592, 596, 575 P.2d 201 (1978); Chandler v. Otto, 103 Wn.2d 268, 274, 693 P.2d 71 (1984).

Here, the Legislature intended the RCW 50.20.050(2)(b) list to be exhaustive. In amending the good cause provision, the Legislature deleted the previous version of the statute which provided:

In determining under this subsection whether an individual has left work voluntarily without good cause, *the commissioner shall* only *consider* work-connected factors *such as* the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and *such other work connected factors as the commissioner may deem pertinent*, including state and national emergencies.

RCW 50.20.050(1)(c) (emphasis added).

By removing the language “such as” and “other work connected factors as the commissioner may deem pertinent,” the Legislature intended to remove the Commissioner’s discretion in determining what constitutes “good cause” to terminate employment.

Second, under the maxim *expressio unius est exclusio alterius*, to express one thing in a statute is to exclude others. Omissions are deemed to be exclusions. In re Detention of Williams, 147 Wn.2d 476, 491, 55 P.3d 597 (2002). By listing ten instances that constitute good cause, the

Legislature intended good cause to be limited to those ten specific events only.

Third, when a statute provides for a stated exception, no other exceptions will be assumed by implication. Jepson v. Dep't of Labor and Industries, 89 Wn.2d 394, 404, 573 P.2d 10 (1977); City of Spokane v. State, 198 Wn. 682, 89 P.2d 826 (1939) (an express exception in a statute excludes all other exceptions and cannot be extended by implication). Therefore, the good cause exceptions to disqualification for voluntarily quitting are to be strictly construed and no other exceptions may be assumed by implication.

Fourth, when the Legislature uses certain statutory language in one instance, and different language in another, the courts will presume a difference in legislative intent. United Parcel Service, Inc. v. State Dep't of Revenue, 102 Wn.2d. 355, 362-63, 687 P.2d 186 (1984). Throughout the Act, the Legislature uses phrases such as “includes, but is not limited to” when it means for a list to be non-exhaustive. *See generally* RCW 50.20.050(2)(a) (“[T]he commissioner shall consider factors *including but not limited to* the following”) (emphasis added); RCW 50.20.050(1)(a) (In determining whether bona fide work is of a bona fide nature, the commissioner shall consider factors *including but not limited to* the following”) (emphasis added); RCW 50.04.294(1) (emphasis added); (“Misconduct *includes, but is not limited to*, the following conduct”); RCW 50.04.294(2) (“These acts *include, but are not limited to*”) (emphasis added); RCW 50.04.294(2) (“These acts *include but are not*

limited to . . .”) (emphasis added); RCW 50.04.294(2)(c) (“Dishonesty related to employment, *including but not limited to . . .*”) (emphasis added); RCW 50.20.012 (“The commissioner may adopt rules as necessary . . . *including but not limited to . . .*”) (emphasis added); RCW 50.04.073 (“Such construction shall *include but not be limited to . . .*”) (emphasis added).

The Legislature chose not to use “includes, but is not limited to” language in RCW 50.20.050(2)(b). Therefore, the Court should presume that the Legislature intends the list of good cause situations to be exhaustive.

Fifth, the criteria in RCW 50.20.050(2)(b) are separated by the word “or.” *See* RCW 50.20.050(2)(b)(ix). The use of the word “or” is disjunctive. Childers v. Childers, 89 Wn.2d 592, 595-596, 575 P.2d 201(1978). “Disjunctive” is defined as “indicating a contrast or an alternative between words, clauses, etc. . . . presenting alternatives.” NEW WORLD DICTIONARY 405 (2d ed. 1976). The Legislature intends to offer several options or “alternatives” under which a claimant could quit work and still receive unemployment benefits. The Legislature intends the RCW 50.20.050(2)(b) criteria to be exhaustive.

An interpretation that RCW 50.20.050(2)(b) is exhaustive does not render the term “good cause” in RCW 50.20.050(2)(a) superfluous. Subsection (2)(a) states the fundamental rule that a person is disqualified if he or she does not have good cause. Subsection (2)(b) defines good

cause. These provisions must be read together.⁹ Vashon Island v. Boundary Review Bd., 127 Wn.2d 759, 771, 903 P.2d 953 (1995). Retention of the term “good cause” in (2)(a) also preserves the causation element of the statute, insuring that the claimant’s actual *reason* for quitting is because of one of the RCW 50.20.050(2)(b) criteria.

C. Spain Did Not Quit Her Job For Good Cause When Her Reason For Quitting Does Not Meet The Definition Of Good Cause Under RCW 50.20.050(2)(b)

Unemployment benefits are a privilege granted by statute, not a right. Gluck v. Empl. Sec. Dep’t, 84 Wn.2d 316, 318, 525 P.2d 768 (1974). The Legislature has discretion to determine the requirements for eligibility in receiving unemployment benefits and the courts will not question the policies underlying the Legislature’s enactment. State v. Heiskell, 129 Wn.2d 113, 122, 916 P.2d 366 (1996).

Here, the Legislature has made the policy determination that good cause is limited to the RCW 50.20.050(2)(b) criteria. It is undisputed Spain’s reason for quitting does not meet any of those criteria.¹⁰ Thus, Spain did not have good cause to terminate her employment and was properly denied benefits.

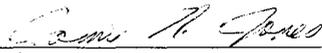
⁹ The same is true for the Act’s misconduct provisions. For example, the rule that misconduct is disqualifying is set out in one statutory section, RCW 50.20.066(1). However, misconduct is defined in another statutory section, RCW 50.04.294.

¹⁰ Spain did not raise this issue before the Superior Court. Similarly, she has not appealed the Superior Court’s order, affirming the Commissioner’s determination that her reason for quitting did not fall within RCW 50.20.050(2)(b).

VII. CONCLUSION

The Commissioner determined that Spain voluntarily quit her job without good cause under the relevant statute and, thus, was not eligible to receive unemployment benefits. Substantial evidence supports this decision and it contains no errors of law. Therefore, the Department respectfully asks that this Court reverse the Superior Court decision and affirm the Commissioner's Decision denying Spain unemployment benefits.

RESPECTFULLY SUBMITTED this 14th day of November, 2005.



JAMIE N. JONES, WSBA # 34329
Assistant Attorney General
Attorney for Appellant

Attachment A

SENATE BILL REPORT

2ESB 6097

As Passed Senate, June 11, 2003

Title: An act relating to revising the unemployment compensation system through creating forty rate classes for determining employer contribution rates.

Brief Description: Revising the unemployment compensation system.

Sponsors: Senators Honeyford and Mulliken.

Brief History:

First Special Session: Passed Senate: 6/10/03, 33-12.

Second Special Session: Passed Senate: 6/11/03, 31-9.

Staff: Jennifer Ziegler (786-7316)

Background: Unemployment Insurance Benefits

Benefit Eligibility. An individual is eligible to receive regular unemployment insurance benefits if he or she: (1) worked at least 680 hours in his or her base year; (2) was separated from employment through no fault of his or her own or quit work for a good cause; and (3) is able to work and is actively searching for work.

Benefit Amount and Duration. Regular benefits are based on the individual's earnings in his or her base year. The maximum weekly benefit equals 70 percent of the average weekly wage. Until July 1, 2004, the maximum rate is \$496. From July 1, 2004 until June 30, 2010, a maximum growth rate of 4 percent is permitted. The maximum duration for benefits is 30 weeks.

Unemployment Insurance Taxes

Washington's unemployment insurance system requires each covered employer to pay contributions on a percentage of his or her taxable payrolls. The contributions of covered employers are held in trust to pay benefits to unemployed workers.

Tax Schedule and Rates. For most covered employers, unemployment insurance contribution rates are determined by the rate in the employer's assigned rate class under the unemployment insurance tax schedule in effect for the calendar year. The employer's position in the tax array depends on the employer's layoff experience relative to the experience of other employers. This relationship is determined by the calculation of a benefit ratio, which is the total benefits charged in the last four years to the employer's experience rating account divided by the employer's taxable payroll in the same period. Based on the relationship of the employer's benefit ratios, employers may be placed in any one of 20 rate classes.

The rates in these classes are determined by the tax schedule in effect. The statute establishes seven different tax schedules, from the lowest schedule of AA through the highest schedule of F. The tax schedule that will be in effect for any given calendar year depends on the fund balance ratio, which compares the unemployment insurance trust fund balance on June 30 of the previous year to the total payroll covered employment in the state for the completed calendar year prior to that June 30.

Some covered employers are not qualified to be assigned a rate class. Unqualified employers include those who do not report enough periods of employment during the previous three years. These employers pay the average industry rate in their industry, as determined by the commissioner of the Employment Security Department, but not less than 1 percent. (Under the Federal Unemployment Tax Act, states must set a 1 percent minimum rate for unqualified employers to maintain the credit that employers in the state may take against their federal unemployment insurance tax.)

The average industry rate also applies to certain successor employers who were not employers at the time of acquiring a business. Until a new successor employer becomes a qualified employer, the rate for these successor employers is the lower of the rate assigned to the predecessor employer of the average industry rate with a 1 percent minimum rate.

Taxable Wage Base. The amount of tax that an employer pays is determined by multiplying the employer's tax rate by the employer's taxable wage base. The taxable wage base is the amount of each employee's wages subject to tax for a given rate year. This amount increases by 15 percent each year with a cap of 80 percent of the state's "average annual wage for contribution purposes." The "average annual wage for contribution purposes" is based on the average of the three previous years' wages.

Experience Rating in the Unemployment Insurance System. Under the experience rating system, most benefits paid to claimants are charged to their former employers' accounts. Some benefits, however, are pooled costs within the system and are generally referred to as socialized costs. One kind of socialized cost is "noncharged benefits." The statutory list of benefits that are not charged to employer accounts include benefits to individuals who are marginally attached to the labor force. A person is marginally attached to the labor force when he or she receives more in benefits than he earned in wages over the same quarter over two years. Other socialized costs include "ineffective charges" that occur when the benefits charged to an employer's account exceed the contributions that the employer pays.

Penalties. Employers who fail to file timely and complete unemployment insurance tax reports must pay a minimum of \$10 per violation.

Administration of Unemployment Insurance Program

The Employment Security Department must verify that every individual who has received five or more weeks of benefits has provided evidence of a search for work. Failure to seek work disqualifies a claimant from benefits for seven weeks.

Claimants must submit their Social Security numbers to receive benefits. If an individual's identity cannot be verified based on work history information, the claimant must submit a verification request form.

Summary of Bill: Unemployment Insurance Benefits

Benefit Eligibility. A part-time worker may receive unemployment benefits if he or she seeks work of 17 hours per less per week. A part-time worker is someone who earns wages in at least 40 weeks of his or her base year and does not earn wages in more than 17 hours per week in more than three weeks of his or her base year.

To receive unemployment insurance benefits, an individual must also separate from employment through no fault of his or her own or quit work for good cause. Effective January 4, 2004, an individual may receive benefits if he or she leaves work for the following reasons:

- (1) leave to accept other work;
- (2) illness or disability of the individual or someone in the individual's immediate family;
- (3) the claimant left work to relocate for the spouse's employment that was the result of a mandatory military transfer and is in a state that does not consider the individual to have left work without good cause;
- (4) domestic violence or stalking;
- (5) reduction of 25 percent or more in compensation or hours;
- (6) change in work site that caused increased distance or difficulty of travel;
- (7) deterioration of work site safety;
- (8) illegal activities in the individual's work site or
- (9) the work violates an individual's religious convictions or sincere moral beliefs.

Misconduct or gross misconduct do not constitute good cause for leaving work. After January 4, 2004, "misconduct" includes the following conduct:

- (1) Willful or wanton disregard of the employer's or a fellow employee's rights, title and interests;
- (2) Deliberate violations or disregard of standards of behavior;
- (3) Carelessness or negligence that causes or would likely cause serious bodily harm to the employer or a fellow employee; or
- (4) Carelessness or negligence to such a degree or recurrence to show intentional or substantial disregard of the employer's interest.

An employee discharged for misconduct is disqualified from benefits for 10 weeks and until he or she earns wages equal to ten times his or her weekly benefit amount.

After January 4, 2004, "gross misconduct" means a criminal act in connection with an individual's work for which the individual has been convicted, admitted committing, or conduct connected with the individual's work that demonstrates a disregard for the employer or a fellow employee. An individual discharged for gross misconduct must have all hourly wage credits based on that employment, or 680 hours of wage credits, whichever is greater, canceled.

Benefit Amount and Duration. In 2004, the weekly benefit amount must be based on one twenty-fifth of the average wages in the three highest quarters of the base year. In 2005, the weekly benefit rate must be equal to 1 percent of the claimant's total wages in the base year.

On or after January 4, 2004, the maximum weekly wage must be \$496 or 63 percent of the average weekly wage for the previous year. When the unemployment rate reaches six and eight-tenths of a percent, the maximum duration for benefits is 26 weeks.

Unemployment Insurance Taxes

Basic Structure for Qualified Employers. Effective in 2005, the current system of tax array, trust fund triggers and schedules based on the trust fund level are eliminated.

An experience rate is assigned to an employer based on layoff history and allocated into 40 rate classes with rates ranging from 0-5.4 percent. This number is the array calculation factor.

A graduated social cost factor is determined by calculating the flat social cost factor rate and providing for a graduated social cost factor rate that ranges from 78 percent to 120 percent of the flat social cost factor depending on rate class.

If the balance in the unemployment insurance trust fund will provide fewer than six months of benefits, an employer's contribution rate may include a solvency surcharge. The solvency surcharge is based on the lowest rate necessary to provide revenue during a rate year that will fund unemployment benefits for the number of months that is the difference between eight months and the number of months the balance in the fund will provide benefits.

The employer's contribution rate is based on the sum of the array calculation factor, the graduated social cost factor and the solvency surcharge, if any. The sum of the array calculation factor and the graduated social cost factor may not exceed 6.5 percent. The rate for employers in certain seasonal industries is capped at 6 percent.

Nonqualified Employers. A new employer must pay a rate that is equal to the industry average plus 15 percent, but not more than 5.4 percent. The graduated social cost factor rate for new employers is the average industry rate plus 15 percent, but no more than the rate assigned in rate class 40.

Delinquent employers must pay an array calculation factor rate that is two-tenths higher than the rate in rate class 40. Their graduated social cost factor rate is the same rate as the rate assigned to rate class 40.

A successor employer must pay the predecessor's rate for the remainder of the rate year if there is a substantial continuity of ownership or management. The successor must pay a rate based on both the predecessor and the successor's experience during the subsequent year.

Taxable Wage Base. Wages are determined based on wage data from the previous year, rather than the previous three years. After December 31, 2003, wages do not include an employee's income attributable to stock options.

Experience Rating in the Unemployment Insurance System. Benefits may only be charged to the individual's separating employer if the individual left work voluntarily for good cause. Seasonal employee benefits during a seasonal work period may only be charged to the contribution paying seasonal employer.

The noncharging of benefits paid to claimants who are marginally attached to the labor force is eliminated.

Penalties. An employer who fails to file a timely or complete report may be subject to a fine up to \$250 or 10 percent of the quarterly contributions, whichever is less. An employer who knowingly misrepresents the amount of his or her payroll is liable for up to 10 times the amount of the difference in contributions paid and the amount the employer should have paid, plus the costs of auditing. An employer who attempts to evade successorship provisions is liable for the maximum tax rate for five quarters.

Administration of the Unemployment Insurance Program

Current statutory language directing that the Employment Security Act must be liberally construed to reduce involuntary unemployment to the minimum is eliminated.

Effective January 4, 2004, the department must contract with employment security agencies in other states to ensure that individuals residing in those states and receiving Washington benefits are actively searching for work.

The department must undertake the following activities:

- (1) Identify programs funded by special administrative contributions and report expenditures for those contributions to the committee;
- (2) Conduct a review of the type, rate and causes of employer turnover in the unemployment compensation system; and
- (3) Conduct a study of the potential for year-to-year volatility, if any, in rate classes under the new tax array.

The department must report its findings and recommendations to the Legislature by December 1, 2003.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Attachment B

FINAL BILL REPORT

2ESB 6097

PARTIAL VETO

C 4 L 03 E2

Synopsis as Enacted

Brief Description: Revising the unemployment compensation system.

Sponsors: Senators Honeyford and Mulliken.

Background: Unemployment Insurance Benefits

Benefit Eligibility. An individual is eligible to receive regular unemployment insurance benefits if he or she: (1) worked at least 680 hours in his or her base year; (2) was separated from employment through no fault of his or her own or quit work for a good cause; and (3) is able to work and is actively searching for work.

Benefit Amount and Duration. Regular benefits are based on the individual's earnings in his or her base year. The maximum weekly benefit equals 70 percent of the average weekly wage. Until July 1, 2004, the maximum rate is \$496. From July 1, 2004 until June 30, 2010, a maximum growth rate of 4 percent is permitted. The maximum duration for benefits is 30 weeks.

Unemployment Insurance Taxes

Washington's unemployment insurance system requires each covered employer to pay contributions on a percentage of his or her taxable payrolls. The contributions of covered employers are held in trust to pay benefits to unemployed workers.

Tax Schedule and Rates. For most covered employers, unemployment insurance contribution rates are determined by the rate in the employer's assigned rate class under the unemployment insurance tax schedule in effect for the calendar year. The employer's position in the tax array depends on the employer's layoff experience relative to the experience of other employers. This relationship is determined by the calculation of a benefit ratio, which is the total benefits charged in the last four years to the employer's experience rating account divided by the employer's taxable payroll in the same period. Based on the relationship of the employer's benefit ratios, employers may be placed in any one of 20 rate classes.

The rates in these classes are determined by the tax schedule in effect. The statute establishes seven different tax schedules, from the lowest schedule of AA through the highest schedule of F. The tax schedule that will be in effect for any given calendar year depends on the fund balance ratio, which compares the unemployment insurance trust fund balance on June 30 of the previous year to the total payroll covered employment in the state for the completed calendar year prior to that June 30.

Some covered employers are not qualified to be assigned a rate class. Unqualified employers include those who do not report enough periods of employment during the previous three

years. These employers pay the average industry rate in their industry, as determined by the commissioner of the Employment Security Department, but not less than 1 percent. (Under the Federal Unemployment Tax Act, states must set a 1 percent minimum rate for unqualified employers to maintain the credit that employers in the state may take against their federal unemployment insurance tax.)

The average industry rate also applies to certain successor employers who were not employers at the time of acquiring a business. Until a new successor employer becomes a qualified employer, the rate for these successor employers is the lower of the rate assigned to the predecessor employer of the average industry rate with a 1 percent minimum rate.

Taxable Wage Base. The amount of tax that an employer pays is determined by multiplying the employer's tax rate by the employer's taxable wage base. The taxable wage base is the amount of each employee's wages subject to tax for a given rate year. This amount increases by 15 percent each year with a cap of 80 percent of the state's "average annual wage for contribution purposes." The "average annual wage for contribution purposes" is based on the average of the three previous years' wages.

Experience Rating in the Unemployment Insurance System. Under the experience rating system, most benefits paid to claimants are charged to their former employers' accounts. Some benefits, however, are pooled costs within the system and are generally referred to as socialized costs. One kind of socialized cost is "noncharged benefits." The statutory list of benefits that are not charged to employer accounts include benefits to individuals who are marginally attached to the labor force. A person is marginally attached to the labor force when he or she receives more in benefits than he earned in wages over the same quarter over two years. Other socialized costs include "ineffective charges" that occur when the benefits charged to an employer's account exceed the contributions that the employer pays.

Penalties. Employers who fail to file timely and complete unemployment insurance tax reports must pay a minimum of \$10 per violation.

Administration of Unemployment Insurance Program

The Employment Security Department must verify that every individual who has received five or more weeks of benefits has provided evidence of a search for work. Failure to seek work disqualifies a claimant from benefits for seven weeks.

Claimants must submit their Social Security numbers to receive benefits. If an individual's identity cannot be verified based on work history information, the claimant must submit a verification request form.

Summary: Unemployment Insurance Benefits

Benefit Eligibility. A part-time worker may receive unemployment benefits if he or she seeks work of 17 hours or less per week. A part-time worker is someone who earns wages in at least 40 weeks of his or her base year and does not earn wages in more than 17 hours per week in more than three weeks of his or her base year.

To receive unemployment insurance benefits, an individual must also separate from employment through no fault of his or her own or quit work for good cause. Effective January 4, 2004, an individual may receive benefits if he or she leaves work for the following reasons:

- (1) leave to accept other work;
- (2) illness or disability of the individual or someone in the individual's immediate family;
- (3) the claimant left work to relocate for the spouse's employment that was the result of a mandatory military transfer and is in a state that does not consider the individual to have left work without good cause;
- (4) domestic violence or stalking;
- (5) reduction of 25 percent or more in compensation or hours;
- (6) change in work site that caused increased distance or difficulty of travel;
- (7) deterioration of work site safety;
- (8) illegal activities in the individual's work site or
- (9) the work violates an individual's religious convictions or sincere moral beliefs.

Misconduct or gross misconduct do not constitute good cause for leaving work. After January 4, 2004, "misconduct" includes the following conduct:

- (1) Willful or wanton disregard of the employer's or a fellow employee's rights, title and interests;
- (2) Deliberate violations or disregard of standards of behavior;
- (3) Carelessness or negligence that causes or would likely cause serious bodily harm to the employer or a fellow employee; or
- (4) Carelessness or negligence to such a degree or recurrence to show intentional or substantial disregard of the employer's interest.

An employee discharged for misconduct is disqualified from benefits for 10 weeks and until he or she earns wages equal to ten times his or her weekly benefit amount.

After January 4, 2004, "gross misconduct" means a criminal act in connection with an individual's work for which the individual has been convicted, admitted committing, or conduct connected with the individual's work that demonstrates a disregard for the employer or a fellow employee. An individual discharged for gross misconduct must have all hourly wage credits based on that employment, or 680 hours of wage credits, whichever is greater, canceled.

Benefit Amount and Duration. In 2004, the weekly benefit amount must be based on one twenty-fifth of the average wages in the three highest quarters of the base year. In 2005, the weekly benefit rate must be equal to 1 percent of the claimant's total wages in the base year.

On or after January 4, 2004, the maximum weekly wage must be \$496 or 63 percent of the average weekly wage for the previous year. When the unemployment rate reaches six and eight-tenths of a percent, the maximum duration for benefits is 26 weeks.

Unemployment Insurance Taxes

Basic Structure for Qualified Employers. Effective in 2005, the current system of tax array, trust fund triggers and schedules based on the trust fund level are eliminated.

An experience rate is assigned to an employer based on layoff history and allocated into 40 rate classes with rates ranging from 0-5.4 percent. This number is the array calculation factor.

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If the balance in the unemployment insurance trust fund will provide fewer than six months of benefits, an employer's contribution rate may include a solvency surcharge. The solvency surcharge is based on the lowest rate necessary to provide revenue during a rate year that will fund unemployment benefits for the number of months that is the difference between eight months and the number of months the balance in the fund will provide benefits.

The employer's contribution rate is based on the sum of the array calculation factor, the graduated social cost factor and the solvency surcharge, if any. The sum of the array calculation factor and the graduated social cost factor may not exceed 6.5 percent. The rate for employers in certain seasonal industries is capped at 6 percent.

Nonqualified Employers. A new employer must pay a rate that is equal to the industry average plus 15 percent, but not more than 5.4 percent. The graduated social cost factor rate for new employers is the average industry rate plus 15 percent, but no more than the rate assigned in rate class 40.

Delinquent employers must pay an array calculation factor rate that is two-tenths higher than the rate in rate class 40. Their graduated social cost factor rate is the same rate as the rate assigned to rate class 40.

A successor employer must pay the predecessor's rate for the remainder of the rate year if there is a substantial continuity of ownership or management. The successor must pay a rate based on both the predecessor and the successor's experience during the subsequent year.

Taxable Wage Base. Wages are determined based on wage data from the previous year, rather than the previous three years. After December 31, 2003, wages do not include an employee's income attributable to stock options.

Experience Rating in the Unemployment Insurance System. Benefits may only be charged to the individual's separating employer if the individual left work voluntarily for good cause. Seasonal employee benefits during a seasonal work period may only be charged to the contribution paying seasonal employer.

The noncharging of benefits paid to claimants who are marginally attached to the labor force is eliminated.

Penalties. An employer who fails to file a timely or complete report may be subject to a fine up to \$250 or 10 percent of the quarterly contributions, whichever is less. An employer who

knowingly misrepresents the amount of his or her payroll is liable for up to 10 times the amount of the difference in contributions paid and the amount the employer should have paid, plus the costs of auditing. An employer who attempts to evade successorship provisions is liable for the maximum tax rate for five quarters.

Administration of the Unemployment Insurance Program

Current statutory language directing that the Employment Security Act must be liberally construed to reduce involuntary unemployment to the minimum is eliminated.

Effective January 4, 2004, the department must contract with employment security agencies in other states to ensure that individuals residing in those states and receiving Washington benefits are actively searching for work.

The department must undertake the following activities:

- (1) Identify programs funded by special administrative contributions and report expenditures for those contributions to the committee;
- (2) Conduct a review of the type, rate and causes of employer turnover in the unemployment compensation system; and
- (3) Conduct a study of the potential for year-to-year volatility, if any, in rate classes under the new tax array.

The department must report its findings and recommendations to the Legislature by December 1, 2003.

Votes on Final Passage:

First Special Session

Senate 33 12

Second Special Session

Senate 31 9

House 52 38 (House amended)

Senate (Senate refused to concur)

House 57 33 (House receded)

Effective: June 20, 2003

Partial Veto Summary: The requirement that unemployment insurance claimants who file claims electronically or telephonically provide additional proof of identity is removed.

Attachment C

HOUSE BILL REPORT

2ESB 6097

As Passed House - Amended:
June 11, 2003

Title: An act relating to revising the unemployment compensation system through creating forty rate classes for determining employer contribution rates.

Brief Description: Revising the unemployment compensation system.

Sponsors: By Senators Honeyford and Mulliken.

Brief History:

Second Special Session

Floor Activity:

Passed House - Amended: 6/11/03, 52-38.

**Brief Summary of Second Engrossed Bill
(As Amended by House)**

- Reduces the maximum weekly benefit amount to \$496 or 63 percent of the state average weekly wage, whichever is greater.
- Reduces the maximum benefit payable to the lesser of 26 times the weekly benefit amount or 1/3 of the total base year wages.
- Beginning in 2004, reduces an individual's weekly benefit amount to 3.9 percent of the average of the individual's wages in the two quarters of the base year in which wages were highest.
- Narrows the reasons for "good cause" quits and broadens the definitions of misconduct.
- Allows certain part-time workers to search for suitable part-time work.
- Creates a new tax array beginning in 2005 that has 40 rate classes and uses rates based on three factors.
- Caps the new tax rate at 6.0 percent for certain seasonal industries (fishing, agriculture, and food processing) and at 6.5 percent for other industries, except when a solvency surcharge applies.
- Requires that certain benefits are charged to the experience rating account of only the separating employer.

Establishes penalties for certain employer delinquencies and/or misrepresentations.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority/Minority Report: None.

Staff: Jill Reinmuth (786-7134); Chris Cordes (786-7103).

Background:

The unemployment compensation system is designed and intended to provide partial wage replacement for workers who are unemployed through no fault of their own. The Employment Security Department (Department) administers this system.

Under the Employment Security Act (Act), eligible unemployed workers receive benefits based on their earnings in their base year. Most covered employers pay contributions (payroll taxes) to finance benefits. The Act is to be liberally construed to reduce involuntary unemployment to the minimum.

I. BENEFITS

A. Eligibility

Benefits are payable to eligible unemployed workers. An individual is eligible to receive benefits if he or she: (1) worked at least 680 hours in covered employment in his or her base year; (2) was separated from employment through no fault of his or her own or quit work for good cause; and (3) is able to work and is actively searching for suitable work.

Most employment is covered under the Act. Employment excluded from coverage includes work performed by certain corporate officers, employees of churches and certain nonprofit organizations, and certain nonresident aliens who are temporarily in the United States to work.

Claimants must search for work according to customary trade practices and through other methods when directed by the Commissioner of the Department (Commissioner). "Suitable work" is employment in an occupation in keeping with the individual's prior work experience, education, or training (unless such work is not available in the general area). In most circumstances, "suitable work" is full-time. The Department must monitor the job search efforts of persons who have received five or more weeks of benefits.

B. Disqualification

Individuals are disqualified from receiving benefits if they leave work voluntarily without good cause or are terminated for work-connected misconduct or a felony or gross misdemeanor.

Good cause, as specified in the Act, means leaving work: (1) to accept other work; (2) because of illness or disability, after taking precautions to preserve employment status with the employer; (3) to relocate for the spouse's employer-initiated mandatory job transfer; and (4) to protect the claimant or an immediate family member from domestic violence. In addition, the Commissioner may determine that other work-related factors are good cause for leaving work.

"Misconduct" is an act or failure to act in willful disregard of the employer's interest where the effect is to harm the employer's business. If an individual is discharged for misconduct, the individual is disqualified from benefits for seven weeks and until he or she earns seven times his or her weekly benefit amount. If an individual is discharged for a felony or gross misdemeanor, the individual loses his or her wage credits from that employment.

C. Duration and Amount

The maximum amount payable in an individual's benefit year is the lesser of 30 times the individual's weekly benefit amount or 1/3 of the total gross wages in the base year. (This amount is commonly expressed in terms of duration. In those terms, the maximum duration of benefits is 30 weeks.)

The maximum weekly benefit amount may not exceed 70 percent of the average weekly wage, except that: (1) from July 1, 2002, through June 30, 2004, the maximum weekly benefit amount is frozen at \$496; and (2) from July 1, 2004, through June 30, 2010, the growth rate in the maximum weekly benefit amount is capped at 4 percent.

An individual's weekly benefit amount is $\frac{1}{25}$ (4.0 percent) of the average of the individual's wages in the two quarters of the base year in which wages were highest.

II. FINANCING

The unemployment compensation system requires covered employers to pay contributions on a percentage of their taxable payroll, except for certain employers that are exempt and certain employers that reimburse the Department for benefits paid to these employers' former workers. The contributions of covered employers are held in trust to pay benefits to unemployed workers.

A. Tax Rates

For most covered employers, contribution rates are determined by the rate in the employer's assigned rate class under the tax schedule in effect for that calendar year. The employer's position in the tax array depends on the employer's layoff experience relative to other employers' experience. This relationship is determined by the calculation of a benefit ratio, which is the total benefits charged in the last four years to the employer's experience rating account divided by the employer's taxable payroll in the same period. Based on the relationship of employers' benefit ratios, employers are placed in one of 20 tax rate classes.

The rates in these classes are determined by the tax schedule in effect. The Act establishes seven different tax schedules, from the lowest schedule of AA through the highest schedule of F. The tax schedule in effect for any given calendar year depends on the fund balance ratio, which compares the unemployment insurance trust fund balance on June 30 of the previous year to the total payroll in covered employment in the state for the completed calendar year prior to that June 30. The tax schedule in effect for 2003 is schedule B.

Several types of covered employers are not qualified to be assigned a rate class. Nonqualified employers include those who do not report enough periods of employment during the previous two years. These new employers pay the average industry rate in their industry, as determined by the Commissioner, but not less than 1 percent. The average industry rate also applies to certain successor employers who were not employers at the time of acquiring a business. Until a new successor employer becomes a qualified employer, the rate for a successor employer is the lower of the rate assigned to its predecessor or the average industry rate with a 1 percent minimum rate. For delinquent employers, the contribution rate is 5.6 percent.

Both qualified and nonqualified employers also may be required to pay an insolvency surcharge of 0.15 percent. This surcharge is added to all contribution-paying employer rates for rate year 2004 (unless the fund balance ratio is above a specified level).

B. Taxable Wage Base

The amount of tax that an employer pays is determined by multiplying the employer's tax rate by the employer's taxable wage base. The taxable wage base is the amount of each employee's wages subject to tax for a given rate year. This amount increases by 15 percent each year from the previous year's taxable wage base, with a cap of 80 percent of the state "average annual wage for contribution purposes." The "average annual wage for contribution purposes" is based on the average of the three previous years' wages. "Wages" includes "the cash value of all compensation paid in any medium other than cash."

C. Experience Rating

Under the experience rating system, most benefits paid to claimants are charged to their base year employers' accounts. In the case of multiple base year employers, benefit charges are prorated in proportion to wages paid.

Some benefits, however, are pooled costs within the system and are generally referred to as socialized costs. One kind of socialized cost is "noncharged benefits." Benefits that are not charged to employer accounts include benefits paid to claimants who requalify after a "voluntary quit" and benefits paid to claimants found to be marginally attached to the labor force. Other socialized costs include "ineffective charges" that occur when the benefits charged to an employer's account exceed the contributions that the employer pays. Costs are also socialized when an employer has an "inactive account," such as after going out of business, and is unable to pay contributions that were assessed.

D. Penalties

Employers who fail to file timely and complete quarterly unemployment tax reports are subject to a minimum penalty of \$10 per violation plus a percent of the amount that is delinquent for the first, second, and third month of delinquency.

Summary of Amended Bill:

Numerous provisions of the Act governing benefits and contributions are modified. The direction that the Act be liberally construed is deleted.

I. BENEFITS

A. Eligibility

Work by nonresident immigrants in the H-2A (agricultural guest worker) and H-2B (other guest worker) programs is excluded from covered employment.

Work search requirements are modified in several ways. Claimants who fail to actively search for work in accordance with the Act lose benefits for weeks in which they were not in compliance and must repay those benefits.

The customary trade practices that claimants must follow when searching for work are modified. If a labor agreement or dispatch rules applies, such customary trade practices must be in accordance with the applicable agreement or rules.

The requirement that "suitable work" be full-time work is modified. For part-time workers, "suitable work" includes work for 17 or fewer hours per week. "Part-time workers" are defined as those workers who earn wages in at least 40 weeks of the base year and who do not earn wages in more than 17 hours per week in any weeks of the

base year.

The Department's job search monitoring duties are increased. In addition to its existing duties, the Department must contract with employment security agencies in other states to ensure that out-of-state claimants in those states are actively engaged in searching for work in accordance with Washington job search requirements. The Department also may use certain electronic means to ensure that individuals are subject to job search monitoring, regardless of whether they reside in Washington or elsewhere.

These changes generally apply beginning with claims that are effective on or after January 4, 2004.

B. Disqualification

The reasons specified in the Act as good cause for leaving work voluntarily are limited. Individuals are not disqualified from receiving benefits if they leave work voluntarily for the following reasons: (1) to accept other work; (2) illness or disability, so long as the individual is not entitled to reinstatement; (3) to relocate for the spouse's mandatory military transfer; (4) to protect the claimant or an immediate family member from domestic violence; (5) a reduction of 25 percent or more in compensation or hours; (6) a change in the worksite that causes increased distance or difficulty of travel; (7) deterioration of work site safety; (8) illegal activities in the worksite; or (9) a change in the individual's usual work that violates his or her religious convictions or sincere beliefs. The Commissioner's discretion to determine that other work-related factors are good cause for leaving work is eliminated.

The definition of "misconduct" is changed, and related requalification requirements are increased. "Misconduct" is redefined as willful or wanton disregard of the employer's or another employee's rights, deliberate violations or disregard of standards of behavior, carelessness or negligence that causes or would likely cause serious bodily harm to the employer or another employee, or carelessness or negligence that shows an intentional or substantial disregard of the employer's interest. An individual who is discharged for misconduct is disqualified from receiving benefits for 10 weeks and until he or she earns 10 times his or her weekly benefit amount.

A definition of "gross misconduct" is added, and related penalties are increased. "Gross misconduct" is defined as a criminal act in connection with an individual's work, or conduct that demonstrates a flagrant and wanton disregard for the employer's or another employee's rights. An individual who is discharged for gross misconduct has his or her wage credits based on that employment or 680 hours of wage credits, whichever is greater, cancelled.

These changes generally apply beginning with claims that are effective on or after

January 4, 2004.

C. Duration and Amount

The maximum benefits payable are reduced. Beginning in the first month after the Commissioner finds that the state's unemployment rate is 6.8 percent or less, the maximum benefits payable are the lesser of 26 times the weekly benefit amount or 1/3 of the total gross wages in the base year. (The maximum duration of benefits is 26 weeks.)

The maximum weekly benefit amount is also reduced. For claims with an effective date on or after January 4, 2004, the maximum weekly benefit amount is 63 percent of the state average weekly wage or \$496, whichever is greater.

The formula for calculating an individual's weekly benefit amount is modified. For claims with an effective date on or after January 4, 2004, an individual's weekly benefit amount is 3.9 percent (instead of 4.0 percent) of the average of the individual's wages in the two quarters of the base year in which wages were highest.

II. FINANCING

A. Tax Rates

A new tax array with 40 rate classes is created beginning in rate year 2005. Employers are assigned one of the 40 rate classes based on the employer's benefit ratio.

Qualified employer rates are the sum of two separate rates:

- The array calculation factor rate is determined by the rate class, and ranges from 0.0 percent in rate class 1 to 5.4 percent in rate class 40.
- The graduated social cost factor rate is determined by calculating the flat social cost factor rate and multiplying by a graduated social cost factor that ranges from 78 percent to 120 percent of the flat social cost factor depending on the rate class.

The sum of the array calculation factor rate and the graduated social cost factor rate may not exceed 6.0 percent for certain seasonal industries (fishing, agriculture, and food processing) and 6.5 percent for other industries, except when a solvency surcharge applies.

Nonqualified employer rates are also the sum of two separate factors.

- For a new employer, the array calculation factor is the average industry rate plus 15 percent of that rate, but not more than 5.4 percent (the rate in rate class 40). The graduated social cost rate is the average industry rate plus 15 percent of that rate, but

not more than the rate assigned to rate class 40.

- A successor employer with substantial continuity of ownership or management of the predecessor's business must pay at the rate assigned to the predecessors and will have the experience of the predecessors transferred to its account as part of the array calculation factor rate beginning in January following the transfer. A successor employer that has acquired two or more businesses must pay at the rate assigned to the predecessor employer with the largest taxable payroll, rather than the highest tax rate class, until it qualifies for its own rate.
- For delinquent employers, the array calculation factor rate is 5.6 percent (two-tenths higher than the rate in rate class 40) and the graduated social cost rate is the same rate as the rate assigned to rate class 40.

A solvency surcharge of up to 0.2 percent replaces the insolvency surcharge. This surcharge is added to all contribution-paying employer rates for a particular rate year only if the fund balance is determined to be an amount that will provide fewer than six months of unemployment benefits.

B. Taxable Wage Base

Beginning in 2007, the state "average annual wage for contribution purposes" is determined using wage data from the previous year (rather than by averaging wage data from the three years prior to the calculation). Income attributable to the exercise of stock options is excluded from "wages" for contribution purposes.

C. Experience Rating

The charging of benefits paid to claimants who separated from employment for certain work-related reasons is changed beginning with benefits charged for claims that have an effective date on or after January 4, 2004. These benefits are charged to the experience rating account of only the separating employer. The work-related reasons are: (1) leave to accept other work; (2) reduction of 25 percent or more in compensation or hours; (3) change in work site that causes increased distance or difficulty of travel; (4) deterioration of work site safety; (4) illegal activities in the worksite; and (5) change in usual work that violates the individual's religious convictions or sincere beliefs.

The noncharging of benefits paid to claimants who are marginally attached to the labor force is eliminated.

D. Penalties

Penalties for certain employer delinquencies and/or misrepresentations are established. If quarterly tax reports are not timely or complete, the penalty is \$250 or 10 percent of the

contributions, whichever is less. If there is a knowing misrepresentation of payroll, the penalty is 10 times the amount of the difference in contributions that were paid and that should have been paid, and audit costs. If the delinquency is due to an intent to evade the successorship provisions, the penalty is the assignment of the maximum tax rate for five quarters.

III. ADMINISTRATION

The Department must require claimants filing claims telephonically or electronically to provide additional proof of identity.

The Department must conduct several studies and report its findings and recommendations to the Legislature by December 1, 2003. In consultation with a business-labor advisory committee, the Department must identify programs funded with special administrative contributions. The Department also must review employer turnover in the unemployment compensation system. Finally, the Department must study the potential for year to year volatility in the rate classes to which employers are assigned.

The Act is modified to specify that various funds in the unemployment insurance system must be used solely for unemployment insurance purposes.

Appropriation: Senate Bill 6099 appropriates \$11.5 million from Reed Act funds to implement Second Engrossed Substitute Bill 6097.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: None.

Testimony Against: None.

Testified: None.

Attachment D

RCW 50.20.050**Disqualification for leaving work voluntarily without good cause.**

(1) With respect to claims that have an effective date before January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven 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 seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

(i) The duration of the work;

(ii) The extent of direction and control by the employer over the work; and

(iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual shall not be considered to have left work voluntarily without good cause when:

(i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;

(ii) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment when again able to assume employment: PROVIDED, That these precautions need not have been taken when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system;

(iii) He or she has left work to relocate for the spouse's employment that is due to an employer-initiated mandatory transfer that is outside the existing labor market area if the claimant remained employed as long as was reasonable prior to the move; or

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.

(c) In determining under this subsection whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies. Good cause shall not be established for voluntarily leaving work because of its distance from an individual's residence where the distance was known to the individual at the time he or she accepted the employment and where, in the judgment of the department, the distance is customarily traveled by workers in the individual's job classification and labor market, nor because of any other significant work factor which was generally known and present at the time he or she accepted employment, unless the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unreasonable hardship on the individual were he or she required to continue in the employment.

(d) Subsection (1)(a) and (c) of this section shall not apply to an individual whose marital status or domestic responsibilities cause him or her to leave employment. Such an individual shall not be eligible for unemployment insurance benefits beginning with the first day of the calendar week in which he or she left work and thereafter for seven calendar weeks and until he or she has requalified, either by obtaining bona fide work in employment covered by this title and earning wages in that employment equal to seven times his or her weekly benefit amount or by reporting in person to the department during ten different calendar weeks and certifying on each occasion that he or she is ready, able, and willing to immediately accept any suitable work which may be offered, is actively seeking work pursuant to customary trade practices, and is utilizing such employment counseling and placement services as are available through the department. This subsection does not apply to individuals covered by (b)(ii) or (iii) of this subsection.

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

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven 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 seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

(i) The duration of the work;

(ii) The extent of direction and control by the employer over the work; and

(iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual is not disqualified from benefits under (a) of this subsection when:

(i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;

(ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant pursued all reasonable alternatives to preserve his or her employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated his or her employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii) He or she: (A) Left work to relocate for the spouse's employment that, due to a mandatory military transfer: (I) is outside the existing labor market area; and (II) is in Washington or another state that, pursuant to statute, does not consider such an individual to have left work voluntarily without good cause; and (B) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

(v) The individual's usual compensation was reduced by twenty-five percent or more;

(vi) The individual's usual hours were reduced by twenty-five percent or more;

(vii) The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;

(viii) The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time; or

(x) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs.

[2003 2nd sp.s. c 4 § 4; 2002 c 8 § 1; 2000 c 2 § 12; 1993 c 483 § 8; 1982 1st ex.s. c 18 § 6; 1981 c 35 § 4; 1980 c 74 § 5; 1977 ex.s. c 33 § 4; 1970 ex.s. c 2 § 21; 1953 ex.s. c 8 § 8; 1951 c 215 § 12; 1949 c 214 § 12; 1947 c 215 § 15; 1945 c 35 § 73; Rem. Supp. 1949 § 9998-211. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

NOTES:

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

Application -- 2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements -- Severability -- Effective date -- 2000 c 2: See notes following RCW 50.04.355.

Effective dates, applicability -- Conflict with federal requirements -- Severability -- 1993 c 483: See notes following RCW 50.04.293.

Severability -- Conflict with federal requirements -- 1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Severability -- 1981 c 35: See note following RCW 50.22.030.

Severability -- 1980 c 74: See note following RCW 50.04.323.

Effective dates -- Construction -- 1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date -- 1970 ex.s. c 2: See note following RCW 50.04.020.

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

NO. 33705-3-II

COURT OF APPEALS FOR DIVISION II
STATE OF WASHINGTON

BY _____
DEPUTY

STATE OF WASHINGTON
EMPLOYMENT SECURITY
DEPARTMENT,

Appellant,

v.

SARA D. SPAIN,

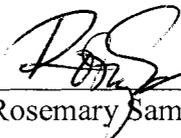
Respondent.

CERTIFICATE OF
SERVICE

On November 14, 2005, I served the attached **APPELLANT'S BRIEF** by placing it in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system for mailing via U.S. Mail at the Office of the Attorney General at 1125 Washington Street SE, PO Box 40110, Olympia, Washington 98504-0110, for mailing via U.S. Mail addressed as follows:

Washington State Court of Appeals Division II Clerk of the Court 950 Broadway, Ste 300 Tacoma, Wa 98402-4427	Marc Lampson Attorney for Respondent 1904 Third Avenue, Suite 604 Seattle, Washington 98101
<u>ORIGINAL</u>	<u>COPY</u>

RESPECTFULLY SUBMITTED this 14th day of November, 2005.



Rosemary Sampson, Legal Assistant

ORIGINAL