

AN ACT Relating to making changes to training benefits in order to qualify for the unemployment insurance modernization incentive provisions of the American Recovery and Reinvestment Act of 2009; amending RCW 50.04.075, 50.20.099, 50.22.130, 50.22.140, and 50.22.155; and creating new sections.

Sec. 1. RCW 50.20.099 and 2000 c 2 s 10 are each amended to read:

(1) To ensure that unemployment insurance benefits are paid in accordance with RCW 50.20.098, the employment security department shall verify that an individual is eligible to work in the United States before the individual receives training benefits under RCW 50.22.150 or 155.

(2) By July 1, 2002, the employment security department shall:

(a) Develop and implement an effective method for determining, where appropriate, eligibility to work in the United States for individuals applying for unemployment benefits under this title;

(b) Review verification systems developed by federal agencies for verifying a person's eligibility to receive unemployment benefits under this title and evaluate the effectiveness of these systems for use in this state; and

(c) Report its initial findings to the legislature by September 1, 2000, and its final report by July 1, 2002.

(3) Where federal law prohibits the conditioning of unemployment benefits on a verification of an individual's

status as a qualified or authorized alien, the requirements of this section shall not apply.

Sec. 2. RCW 50.22.130 and 2009 c 353 s 3 are each amended to read as follows:

It is the intent of the legislature that a training benefits program be established to provide unemployment insurance benefits to unemployed individuals who participate in training programs necessary for their reemployment.

The legislature further intends that this program serve the following goals:

(1) Retraining should be available for those unemployed individuals whose skills are no longer in demand;

~~(2) ((To be eligible for retraining, an individual must have a long term attachment to the labor force;))~~

~~((3))~~ Training must enhance the individual's marketable skills and earning power; and

~~((4))~~ (3) Retraining must be targeted to high-demand occupations.

Individuals unemployed as a result of structural changes in the economy and technological advances rendering their skills obsolete must receive the highest priority for participation in this program. It is the further intent of the legislature that individuals for whom suitable employment is available are not eligible for additional benefits while participating in training.

~~((The legislature further intends that funding for this program be limited by a specified maximum amount each fiscal year.))~~

Sec. 3. RCW 50.22.155 and 2009 c 3 s 4 is amended to read as follows:

(1) ~~((This section applies))~~ With respect to claims with an effective date on or after April 5, 2009 and before

January 1, 2012(~~(.→)~~):

~~((2→))~~ (a) Subject to availability of funds, training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits when:

~~((a→))~~ (i) The individual is a dislocated worker as defined in RCW 50.04.075 and, after assessment of the individual's labor market, occupation, or skills, is determined to need job-related training to find suitable employment in the individual's labor market. The assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets and high-demand occupations identified in local labor market areas by the local workforce development councils in cooperation with the employment security department and its labor market information division; or

~~((b→))~~ (ii) For claims with an effective date on or after September 7, 2009, the individual:

~~((i→))~~ (A) Earned an average hourly wage in the individual's base year that is less than one hundred thirty percent of the state minimum wage, and after assessment, it is determined that the individual's earning potential will be enhanced through vocational training. The individual's average hourly wage is calculated by dividing the total wages paid by the total hours worked in the individual's base year;

~~((ii→))~~ (B) Served in the United States military or the Washington national guard during the twelve-month period prior to the application date, was honorably

discharged from military service or the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market;

~~((iii))~~ (C) Is currently serving in the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market; or

~~((iv))~~ (D) Is disabled due to an injury or illness and, after assessment, is determined to be unable to return to his or her previous occupation and to need job-related training to find suitable employment in the individual's labor market.

~~((3)(a))~~ (b)(i) The individual must develop an individual training program that is submitted to the commissioner for approval within ninety days after the individual is notified by the employment security department of the requirements of this section;

~~((b))~~ (ii) The individual must enter the approved training program by one hundred twenty days after the date of the notification, unless the employment security department determines that the training is not available during the one hundred twenty days, in which case the individual enters training as soon as it is available;

~~((e))~~ (iii) The department may waive the deadlines established under this subsection for reasons deemed by the commissioner to be good cause.

~~((4))~~ (c) The individual must be enrolled in training approved under this section on a full-time basis as determined by the educational institution, except that less than full-time training may be approved when the individual has a physical, mental, or emotional disability that precludes enrollment on a full-time basis.

~~((5))~~ (d) The individual must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution.

~~((6))~~ (e) An individual is not eligible for training benefits under this section if he or she:

~~((a))~~ (i) Is a standby claimant who expects recall to his or her regular employer; or

~~((b))~~ (ii) Has a definite recall date that is within six months of the date he or she is laid off.

~~((7))~~ (f) The following definitions apply throughout this section unless the context clearly requires otherwise.

~~((a))~~ (i) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

~~((b))~~ (ii) "High-demand occupation" means an occupation with a substantial number of current or

projected employment opportunities.

~~((e))~~ (iii) "Training benefits" means additional benefits paid under this section.

~~((d))~~ (iv) "Training program" means:

~~((i))~~ (A) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

~~((ii))~~ (B) A vocational training program at an educational institution that:

~~((A))~~ (I) Is targeted to training for a high-demand occupation;

~~((B))~~ (II) Is likely to enhance the individual's marketable skills and earning power; and

~~((C))~~ (III) Meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for

specific skills necessary for the occupation.

~~((8))~~ (g) Benefits shall be paid as follows:

~~((a))~~ (i) The total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year.

~~((b))~~ (ii) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits.

~~((c))~~ (iii) Training benefits shall be paid before any extended benefits but not before any similar federally funded program.

~~((d))~~ (iv) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim.

~~((9))~~ (h) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

~~((10))~~ (i) Individuals who receive training benefits under RCW 50.22.150, RCW 50.22.155, or this section are not eligible for training benefits under this section for five years from the last receipt of training benefits.

~~((11))~~ (j) An individual eligible to receive a trade readjustment allowance under chapter 2, Title II of the trade act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance.

~~((12))~~ (k) An individual eligible to receive emergency unemployment compensation under any federal law shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

~~((13))~~ (l) All base year employers are interested parties to the approval of training and the granting of training benefits.

~~((14))~~ (m) Each local workforce development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and high-demand occupations and skill sets. Each local workforce development council shall update this information annually or more frequently if needed.

~~((15) The commissioner shall adopt rules as necessary to implement this section.))~~

(2) With respect to claims with an effective date on or after January 1, 2012:

(a) Training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits when:

(i) The individual is a dislocated worker as defined in RCW 50.04.075 and, after assessment of the individual's labor market, occupation, or skills, is determined to need job-related training to find suitable employment in the individual's labor market. The assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets and high-demand occupations identified in local labor market areas by the local workforce development councils in cooperation with the employment security department and its labor market information division; or

(ii) Subject to the availability of funds as specified in section 4 of this act, the individual:

(A) Earned an average hourly wage in the individual's base year that is less than one hundred thirty percent of the state minimum wage, and after assessment, it is determined that the individual's earning potential will be enhanced through vocational training. The individual's average hourly wage is calculated by dividing the total wages paid by the total hours worked in the individual's base year;

(B) Served in the United States military or the Washington national guard during the twelve-month period prior to the application date, was honorably discharged from military service or the Washington national guard and, after assessment, is determined to need job-related

training to find suitable employment in the individual's labor market;

(C) Is currently serving in the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market; or

(D) Is disabled due to an injury or illness and, after assessment, is determined to be unable to return to his or her previous occupation and to need job-related training to find suitable employment in the individual's labor market.

(b)(i) Except for an individual eligible under subsection 3(2)(a)(i) of this act, the individual must develop an individual training plan that is submitted to the commissioner for approval within ninety days after the individual is notified by the employment security department of the requirements of this section;

(ii) Except for an individual eligible under subsection 3(2)(a)(i) of this act, the individual must enroll in the approved training program by one hundred twenty days after the date of the notification, unless the employment security department determines that the training is not available during the one hundred twenty days, in which case the individual enters training as soon as it is available;

(iii) An individual eligible under subsection 3(2)(a)(i) of this act must submit an individual training plan and enroll in the approved training program prior to the end of the individual's benefit year;

(iv) The department may waive the deadlines established under subsections 3(2)(b)(i) and 3(2)(b)(ii) for reasons deemed by the commissioner to be good cause.

(c) Except for an individual eligible under subsection 3(2)(a)(i) of this act, the individual must be enrolled in training approved under this section on a full-time basis as determined by the educational institution, except that less than full-time training may be approved when the individual has a physical, mental, or emotional disability that precludes enrollment on a full-time basis.

(d) The individual must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution.

(e) An individual is not eligible for training benefits under this section if he or she:

(i) Is a standby claimant who expects recall to his or her regular employer; or

(ii) Has a definite recall date that is within six months of the date he or she is laid off.

(f) The following definitions apply throughout this section unless the context clearly requires otherwise.

(i) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

(ii) "High-demand occupation" means an occupation with a substantial number of current or projected employment opportunities.

(iii) "Training benefits" means additional benefits paid under this section.

(iv) "Training program" means:

(A) An education program determined to be necessary as a prerequisite to vocational training after counseling at

the educational institution in which the individual enrolls under his or her approved training program; or

(B) A vocational training program at an educational institution that:

(I) Is targeted to training for a high-demand occupation;

(II) Is likely to enhance the individual's marketable skills and earning power; and

(III) Meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(g) Available benefits shall be paid as follows:

(i) The total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits paid, or deemed paid, with respect to the benefit year.

(ii) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits.

(iii) Training benefits shall be paid after any federally funded program.

(iv) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim.

(h) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(i) Except for individuals eligible under subsection 3(2)(a)(i) of this act, individuals who receive training benefits under RCW 50.22.150, RCW 50.22.155 or this section are not eligible for training benefits under this section for five years from the last receipt of training benefits.

(j) An individual eligible to receive a trade readjustment allowance under chapter 2, Title II of the trade act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance.

(k) An individual eligible to receive emergency unemployment compensation under any federal law shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

(l) All base year employers are interested parties to the approval of training and the granting of training benefits.

(m) Each local workforce development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and high-demand occupations and skill sets. Each local workforce development council shall update this information annually or more frequently if needed.

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

Sec. 4. RCW 50.22.140 and 2002 c 149 s 1 are each amended to read:

(1) The employment security department is authorized to pay training benefits under RCW 50.22.150 ~~((but may not obligate expenditures beyond the limits specified in this section or as otherwise set by the legislature. For the fiscal year ending June 30, 2000, the commissioner may not obligate more than twenty million dollars for training benefits. For the two fiscal years ending June 30, 2002, the commissioner may not obligate more than sixty million dollars for training benefits. Any funds not obligated in one fiscal year may be carried forward to the next fiscal year))~~ and RCW 50.22.155. ~~((For each fiscal year beginning after June 30, 2002, t))~~The commissioner may not obligate more than twenty million dollars annually in addition to any funds carried forward from previous fiscal years. ~~((The department shall develop a process to ensure that expenditures do not exceed available funds and to prioritize access to funds when again available.))~~

(2) ~~((After June 30, 2002, in addition to the amounts that may be obligated under subsection (1) of this section, the commissioner may obligate up to thirty four million dollars for training benefits under RCW 50.22.150 for individuals in the aerospace industry assigned the standard industrial classification code "372" or the North American industry classification system code "336411" whose claims are filed before January 5, 2003. The funds provided in this subsection must be fully obligated for training~~

~~benefits for these individuals before the funds provided in subsection (1) of this section may be obligated for training benefits for these individuals. Any amount of the funds specified in this subsection that is not obligated as permitted may not be carried forward to any future period.)~~ If the amount available for training benefits at any time is equal to or less than \$5 million, funds will no longer be obligated for individuals in subsection 3(2)(a)(ii) of this act. If funds are exhausted, training benefits will continue to be obligated to dislocated workers only under subsection 3(2)(a)(i) of this act. The following year's obligation for training benefits will be reduced by a corresponding amount.

Sec. 5. RCW 50.24.014 and 2009 c 566 s 2 are each amended to read:

(1)(a) A separate and identifiable account to provide for the financing of special programs to assist the unemployed is established in the administrative contingency fund. All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, at a basic rate of two one-hundredths of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010.

(b) A separate and identifiable account is established

in the administrative contingency fund for financing the employment security department's administrative costs under RCW 50.22.150 and 50.22.155 and the costs under RCW 50.22.150(11) and 50.22.155 (~~((14))~~)(1)(m) and (2)(m). All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, those employers who are required to make payments in lieu of contributions, those employers described under *RCW 50.29.025(1)(f)(ii), and those qualified employers assigned rate class 20 or rate class 40, as applicable, under RCW 50.29.025, at a basic rate of one one-hundredth of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010. Any amount of contributions payable under this subsection (1)(b) that exceeds the amount that would have been collected at a rate of four one-thousandths of one percent must be deposited in the account created in (a) of this subsection.

(2)(a) Contributions under this section shall become due and be paid by each employer under rules as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

(b) In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) If the commissioner determines that federal funding has been increased to provide financing for the services specified in chapter 50.62 RCW, the commissioner shall direct that collection of contributions under this section be terminated on the following January 1st.

Sec. 6. RCW 50.04.075 and 1984 c 181 s 1 are each amended to read as follows:

(1) With respect to claims with an effective date prior to January 1, 2012, "~~((D))~~dislocated worker" means any individual who:

(a) Has been terminated or received a notice of termination from employment;

~~((2))~~(b) Is eligible for or has exhausted entitlement to unemployment compensation benefits; and

~~((3))~~(c) Is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for their skills in that occupation or industry.

(2) With respect to claims with an effective date on or after January 1, 2012, "dislocated worker" means any individual who:

(a) Has been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment, or has separated from a declining occupation; and

(b) Is eligible for or has exhausted entitlement to unemployment compensation benefits.

NEW SECTION. **Sec. 7.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to

the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

NEW SECTION. **Sec. 8.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 9.** If, within ninety days after final adjournment of the legislative session in which this act is enacted, the United States Department of Labor determines this act does not meet the requirements of section 2003 of the American Recovery and Reinvestment Act of 2009 for UI modernization incentive funding, this act is null and void.

NEW SECTION. **Sec. 10.** This act takes effect January 1, 2012.