

---

HOUSE BILL 1274

---

State of Washington                      61st Legislature                      2009 Regular Session

By Representatives Condotta, Chandler, Crouse, and Herrera

Read first time 01/16/09. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to the corporate officer provisions of the  
2 employment security act; amending RCW 50.12.070, 50.04.165, 50.04.310,  
3 50.04.080, and 50.04.090; creating a new section; and repealing RCW  
4 50.24.230.

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

6            **Sec. 1.** RCW 50.12.070 and 2008 c 120 s 7 are each amended to read  
7 as follows:

8            (1)(a) Each employing unit shall keep true and accurate work  
9 records, containing such information as the commissioner may prescribe.  
10 Such records shall be open to inspection and be subject to being copied  
11 by the commissioner or his or her authorized representatives at any  
12 reasonable time and as often as may be necessary. The commissioner may  
13 require from any employing unit any sworn or unsworn reports with  
14 respect to persons employed by it, which he or she deems necessary for  
15 the effective administration of this title.

16            (b) An employer who contracts with another person or entity for  
17 work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a  
18 record of the unified business identifier account number for and  
19 compensation paid to the person or entity performing the work. Failure

1 to obtain or maintain the record is subject to RCW 39.06.010 and to a  
2 penalty determined by the commissioner, but not to exceed two hundred  
3 fifty dollars, to be collected as provided in RCW 50.24.120.

4 (2)(a) Each employer shall register with the department and obtain  
5 an employment security account number. (~~Registration must include the~~  
6 ~~names and social security numbers of the owners, partners, members, or~~  
7 ~~corporate officers of the business, as well as their mailing addresses~~  
8 ~~and telephone numbers and other information the commissioner may by~~  
9 ~~rule prescribe. Registration of corporations must also include the~~  
10 ~~percentage of stock ownership for each corporate officer, delineated by~~  
11 ~~zero percent, less than ten percent, or ten percent or more. Any~~  
12 ~~changes in the owners, partners, members, or corporate officers of the~~  
13 ~~business, and changes in percentage of ownership of the outstanding~~  
14 ~~shares of stock of the corporation, must be reported to the department~~  
15 ~~at intervals prescribed by the commissioner under (b) of this~~  
16 ~~subsection.~~

17 ~~(b))~~ Each employer shall make periodic reports at such intervals  
18 as the commissioner may by regulation prescribe, setting forth the  
19 remuneration paid for employment to workers in its employ, the full  
20 names and social security numbers of all such workers, and the total  
21 hours worked by each worker and such other information as the  
22 commissioner may by regulation prescribe.

23 ~~((e))~~ (b) If the employing unit fails or has failed to report the  
24 number of hours in a reporting period for which a worker worked, such  
25 number will be computed by the commissioner and given the same force  
26 and effect as if it had been reported by the employing unit. In  
27 computing the number of such hours worked, the total wages for the  
28 reporting period, as reported by the employing unit, shall be divided  
29 by the dollar amount of the state's minimum wage in effect for such  
30 reporting period and the quotient, disregarding any remainder, shall be  
31 credited to the worker: PROVIDED, That although the computation so  
32 made will not be subject to appeal by the employing unit, monetary  
33 entitlement may be redetermined upon request if the department is  
34 provided with credible evidence of the actual hours worked. Benefits  
35 paid using computed hours are not considered an overpayment and are not  
36 subject to collections when the correction of computed hours results in  
37 an invalid or reduced claim; however:

1 (i) A contribution paying employer who fails to report the number  
2 of hours worked will have its experience rating account charged for all  
3 benefits paid that are based on hours computed under this subsection;  
4 and

5 (ii) An employer who reimburses the trust fund for benefits paid to  
6 workers and fails to report the number of hours worked shall reimburse  
7 the trust fund for all benefits paid that are based on hours computed  
8 under this subsection.

9 **Sec. 2.** RCW 50.04.165 and 2007 c 146 s 4 are each amended to read  
10 as follows:

11 ~~((1)(a))~~ Services performed by a person appointed as an officer  
12 of a corporation under RCW 23B.08.400 ~~((are))~~, other than those covered  
13 by chapter 50.44 RCW, shall not be considered services in employment.  
14 However, a corporation ~~((, other than those covered by chapters 50.44~~  
15 ~~and 50.50 RCW,))~~ may elect to ~~((exempt from coverage under this title~~  
16 ~~as provided in subsection (2) of this section, any bona fide officer of~~  
17 ~~a public company as defined in RCW 23B.01.400 who:~~

18 ~~(i) Is voluntarily elected or voluntarily appointed in accordance~~  
19 ~~with the articles of incorporation or bylaws of the corporation;~~

20 ~~(ii) Is a shareholder of the corporation;~~

21 ~~(iii) Exercises substantial control in the daily management of the~~  
22 ~~corporation; and~~

23 ~~(iv) Whose primary responsibilities do not include the performance~~  
24 ~~of manual labor.~~

25 ~~(b) A corporation, other than those covered by chapters 50.44 and~~  
26 ~~50.50 RCW, that is not a public company as defined in RCW 23B.01.400~~  
27 ~~may exempt from coverage under this title as provided in subsection (2)~~  
28 ~~of this section:~~

29 ~~(i) Eight or fewer bona fide officers who: Voluntarily agree to be~~  
30 ~~exempted from coverage; are voluntarily elected or voluntarily~~  
31 ~~appointed in accordance with the articles of incorporation or bylaws of~~  
32 ~~the corporation; and who exercise substantial control in the daily~~  
33 ~~management of the corporation, from coverage under this title without~~  
34 ~~regard to the officers' performance of manual labor if the exempted~~  
35 ~~officer is a shareholder of the corporation; and~~

36 ~~(ii) Any number of officers if all the exempted officers are~~  
37 ~~related by blood within the third degree or marriage.~~

1       ~~(c) Determinations with respect to the status of persons performing~~  
2 ~~services for a corporation must be made, in part, by reference to Title~~  
3 ~~23B RCW and to compliance by the corporation with its own articles of~~  
4 ~~incorporation and bylaws. For the purpose of determining coverage~~  
5 ~~under this title, substance controls over form, and mandatory coverage~~  
6 ~~under this title extends to all workers of this state, regardless of~~  
7 ~~honorary titles conferred upon those actually serving as workers.~~

8       ~~(2)(a) The corporation must notify the department when it elects to~~  
9 ~~exempt one or more corporate officers from coverage. The notice must~~  
10 ~~be in a format prescribed by the department and signed by the officer~~  
11 ~~or officers being exempted and by another corporate officer verifying~~  
12 ~~the decision to be exempt from coverage.~~

13       ~~(b) The election to exempt one or more corporate officers from~~  
14 ~~coverage under this title may be made when the corporation registers as~~  
15 ~~required under RCW 50.12.070. The corporation may also elect exemption~~  
16 ~~at any time following registration; however, an exemption will be~~  
17 ~~effective only as of the first day of a calendar year. A written~~  
18 ~~notice from the corporation must be sent to the department by January~~  
19 ~~15th following the end of the last calendar year of coverage.~~  
20 ~~Exemption from coverage will not be retroactive, and the corporation is~~  
21 ~~not eligible for a refund or credit for contributions paid for~~  
22 ~~corporate officers for periods before the effective date of the~~  
23 ~~exemption.~~

24       ~~(3) A corporation may elect to reinstate coverage for one or more~~  
25 ~~officers previously exempted under this section, subject to the~~  
26 ~~following:~~

27       ~~(a) Coverage may be reinstated only at set intervals of five years~~  
28 ~~beginning with the calendar year that begins five years after January~~  
29 ~~1, 2009.~~

30       ~~(b) Coverage may only be reinstated effective the first day of the~~  
31 ~~calendar year. A written notice from the corporation must be sent to~~  
32 ~~the department by January 15th following the end of the last calendar~~  
33 ~~year the exemption from coverage will apply.~~

34       ~~(c) Coverage will not be reinstated if the corporation: Has~~  
35 ~~committed fraud related to the payment of contributions within the~~  
36 ~~previous five years; is delinquent in the payment of contributions; or~~  
37 ~~is assigned the array calculation factor rate for nonqualified~~

1 ~~employers because of a failure to pay contributions when due as~~  
2 ~~provided in RCW 50.29.025, or for related reasons as determined by the~~  
3 ~~commissioner.~~

4 ~~(d) Coverage will not be reinstated retroactively.~~

5 ~~(4) Except for corporations covered by chapters 50.44 and 50.50~~  
6 ~~RCW, personal services performed by bona fide corporate officers for~~  
7 ~~corporations described under RCW 50.04.080(3) and 50.04.090(2) are not~~  
8 ~~considered services in employment, unless the corporation registers~~  
9 ~~with the department as required in RCW 50.12.070 and elects to provide~~  
10 ~~coverage for its corporate officers under RCW 50.24.160)) cover not~~  
11 ~~less than all of its corporate officers under RCW 50.24.160. If an~~  
12 ~~employer does not elect to cover its corporate officers under RCW~~  
13 ~~50.24.160, the employer must notify its corporate officers in writing~~  
14 ~~that they are ineligible for unemployment benefits. However, if the~~  
15 ~~employer fails to provide notice, the individual's status as a~~  
16 ~~corporate officer is unchanged and the person remains ineligible for~~  
17 ~~unemployment benefits.~~

18 **Sec. 3.** RCW 50.04.310 and 2007 c 146 s 5 are each amended to read  
19 as follows:

20 (1) An individual is "unemployed" in any week during which the  
21 individual performs no services and with respect to which no  
22 remuneration is payable to the individual, or in any week of less than  
23 full time work, if the remuneration payable to the individual with  
24 respect to such week is less than one and one-third times the  
25 individual's weekly benefit amount plus five dollars. The commissioner  
26 shall prescribe regulations applicable to unemployed individuals making  
27 such distinctions in the procedures as to such types of unemployment as  
28 the commissioner deems necessary.

29 (2) An individual is not "unemployed" during any week which falls  
30 totally within a period during which the individual, pursuant to a  
31 collective bargaining agreement or individual employment contract, is  
32 employed full time in accordance with a definition of full time  
33 contained in the agreement or contract, and for which compensation for  
34 full time work is payable. This subsection may not be applied  
35 retroactively to an individual who had no guarantee of work at the  
36 start of such period and subsequently is provided additional work by  
37 the employer.

1       ~~((3) An officer of a corporation who owns ten percent or more of~~  
2 ~~the outstanding stock of the corporation, or a corporate officer who is~~  
3 ~~a family member of an officer who owns ten percent or more of the~~  
4 ~~outstanding stock of the corporation, whose claim for benefits is based~~  
5 ~~on any wages with that corporation, is:~~

6       ~~(a) Not "unemployed" in any week during the individual's term of~~  
7 ~~office or ownership in the corporation, even if wages are not being~~  
8 ~~paid;~~

9       ~~(b) "Unemployed" in any week upon dissolution of the corporation or~~  
10 ~~if the officer permanently resigns or is permanently removed from their~~  
11 ~~appointment and responsibilities with that corporation in accordance~~  
12 ~~with its articles of incorporation or bylaws.~~

13       ~~As used in this section, "family member" means persons who are~~  
14 ~~members of a family by blood or marriage as parents, stepparents,~~  
15 ~~grandparents, spouses, children, brothers, sisters, stepchildren,~~  
16 ~~adopted children, or grandchildren.))~~

17       **Sec. 4.** RCW 50.04.080 and 2007 c 146 s 19 are each amended to read  
18 as follows:

19       ~~((1))~~ "Employer" means any individual or type of organization,  
20 including any partnership, association, trust, estate, joint stock  
21 company, insurance company, limited liability company, or corporation,  
22 whether domestic or foreign, or the receiver, trustee in bankruptcy,  
23 trustee, or the legal representative of a deceased person, having any  
24 person in employment or, having become an employer, has not ceased to  
25 be an employer as provided in this title.

26       ~~((2) For the purposes of collection remedies available under~~  
27 ~~chapter 50.24 RCW, "employer," in the case of a corporation or limited~~  
28 ~~liability company, includes persons found personally liable for any~~  
29 ~~unpaid contributions and interest and penalties on those contributions~~  
30 ~~under RCW 50.24.230.~~

31       ~~(3) Except for corporations covered by chapters 50.44 and 50.50~~  
32 ~~RCW, "employer" does not include a corporation when all personal~~  
33 ~~services are performed only by bona fide corporate officers, unless the~~  
34 ~~corporation registers with the department as required in RCW 50.12.070~~  
35 ~~and elects to provide coverage for its corporate officers under RCW~~  
36 ~~50.24.160.))~~

1       **Sec. 5.** RCW 50.04.090 and 2007 c 146 s 20 are each amended to read  
2 as follows:

3       (~~(1)~~) "Employing unit" means any individual or any type of  
4 organization, including any partnership, association, trust, estate,  
5 joint stock company, insurance company, or corporation, whether  
6 domestic or foreign, or the receiver, trustee in bankruptcy, trustee or  
7 successor thereof, or the legal representative of a deceased person,  
8 which has or subsequent to January 1, 1937, had in its employ or in its  
9 "employment" one or more individuals performing services within this  
10 state. The state and its political subdivisions shall be deemed  
11 employing units as to any transactions occurring on or after September  
12 21, 1977, which would render an employing unit liable for  
13 contributions, interest, or penalties under RCW 50.24.130. "Employing  
14 unit" includes Indian tribes as defined in RCW 50.50.010.

15       (~~(2) Except for corporations covered by chapters 50.44 and 50.50~~  
16 ~~RCW, "employing unit" does not include a corporation when all personal~~  
17 ~~services are performed only by bona fide corporate officers, unless the~~  
18 ~~corporation registers with the department as required in RCW 50.12.070~~  
19 ~~and elects to provide coverage for its corporate officers under RCW~~  
20 ~~50.24.160.))~~

21       NEW SECTION.       **Sec. 6.** RCW 50.24.230 (Corporate or limited  
22 liability company officers, members, and owners--Personal liability)  
23 and 2007 c 146 s 18 are each repealed.

24       NEW SECTION.       **Sec. 7.** If any part of this act is found to be in  
25 conflict with federal requirements that are a prescribed condition to  
26 the allocation of federal funds to the state or the eligibility of  
27 employers in this state for federal unemployment tax credits, the  
28 conflicting part of this act is inoperative solely to the extent of the  
29 conflict, and the finding or determination does not affect the  
30 operation of the remainder of this act. Rules adopted under this act  
31 must meet federal requirements that are a necessary condition to the  
32 receipt of federal funds by the state or the granting of federal  
33 unemployment tax credits to employers in this state.

34       NEW SECTION.       **Sec. 8.** If any provision of this act or its

1 application to any person or circumstance is held invalid, the  
2 remainder of the act or the application of the provision to other  
3 persons or circumstances is not affected.

--- END ---