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**Expanding permissible reasons for
voluntary quits in the Unemployment
Insurance Program: Legal survey and
Trust Fund impact study**



**Employment
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Expanding permissible reasons for voluntary quits in the Unemployment Insurance Program:

Legal survey and Trust Fund impact study

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Expanding permissible reasons for voluntary quits in the Unemployment Insurance Program: Legal survey and Trust Fund impact study

Executive summary

Senate Bill 5473 (SB 5473) directs the Employment Security Department (ESD) to prepare a report on the law surrounding voluntary quits in Washington state. The bill also requires analysis of the voluntary quit laws of other states, as well as an estimate of the impact on employer experience ratings, or socialized cost if the benefits are not charged to the employers' experience rating accounts, to the Unemployment Insurance Trust Fund (the Trust Fund) if the legislature were to expand the reasons for voluntarily quitting work with good cause.

The report examines three reasons for voluntarily quitting that currently do not amount to good cause under Washington state law:

- (1) care for a child or vulnerable adult became inaccessible and the claimant's reasonable efforts to retain employment were unsuccessful;
- (2) the employer significantly changed working conditions or substantially increased job duties without a commensurate change in pay;
- (3) the claimant relocated out of the existing labor market to be in closer proximity to a minor child.

Washington state law specifically enumerates twelve exclusive reasons for voluntarily quitting work with good cause.

Fourteen states consider quitting on account of inaccessible care to be good cause. Thirty-three states allow claimants to have good cause in situations where an employer changes a claimant's shift and it has a detrimental effect on the claimant.

Every other state allows changed working conditions or increased job duties to provide grounds for good cause, under a variety of circumstances.

Only one state, California, has codified a regulation which allows claimants to have good cause when they quit to relocate to be in closer proximity to a minor child. New York also allows quitting for this reason, but only through interpretation of its quit to follow spouse regulations. Three other states, Kansas, Oregon, and Pennsylvania would likely allow this reason for quitting if there are also compelling circumstances for the child and parent being geographically close to each other.

Employers' taxes for unemployment insurance go into the Trust Fund. ESD then draws from the trust to pay unemployment insurance benefits. When the law is changed to allow more people to receive unemployment benefits, there may be impacts to employers' tax rates and Trust Fund balance. Benefit charges for an employer occur when former employees receive benefit payments. For taxable employers, the higher the benefits charged against an account, the higher the tax rate. Under some circumstances, an employer may receive relief of benefit charges. ESD removes relieved charges from the employer's account and doesn't include them when calculating the employer's tax rate. Instead, these benefit charges are socialized, which means the cost is spread out to all taxable employers in the state.

SB 5473 directs ESD to analyze the impact to the Trust Fund and employer tax rates of each proposed change to the voluntary quit law. The bill further directs ESD to determine how an employer's taxes would be impacted if the benefits were charged to the employer's account or if they were socialized. ESD first needed to estimate how the proposed changes would impact the yearly number of voluntary quits. ESD accordingly searched recent legal separation decisions, surveyed laws in other states, reached out to stakeholders for data,

and analyzed historical Washington unemployment insurance claims' data and trends provide estimates. ESD projects that the proposed expansion of the basis for voluntary quits for care of a child or vulnerable adult will result in an increase in approximately 650 claims per year, substantially changed working conditions or increased job duties without increasing pay will increase claims by 1,434 per year and moving to a different job market to be nearer to their minor child will result in an increase of 200 claims per year.

ESD then determined how the increase in voluntary quits for each category would impact the overall balance in the Trust Fund and how it could impact an individual employer's taxes if they were charged. For this analysis, ESD assumes the employer has the average tax rate (rate class 8), 5 employees making \$50,000 annually and one additional voluntary quit decision. Under such assumptions, the Trust Fund will be impacted in the following way: (1) care for a child or vulnerable adult, an increase of \$4,363,905 in total benefit charges; (2) change in working conditions or job duties without a commensurate pay increase, an increase of \$9,627,446 in total benefit charges; and (3) leaving a job to be in closer proximity to a minor child, an increase of \$1,342,740 of total benefit charges, with an total aggregate impact to the Trust Fund of \$15,334,091.

ESD calculated an individual employer's taxes if the benefits are not charged and if they are charged under three different scenarios. In 2020, under the first scenario, the average employer is in rate class 8, with 5 employees making \$50,000 a year and has one charge. If ESD does not apply benefit charges, this employer will pay \$8,000 in total taxes if a former employee receives benefits under one of the new good cause reasons for voluntarily quitting. If ESD does apply benefit charges, the employer will pay \$14,672, an increase of \$4,150. In the second scenario, an employer in rate class 8, with 20 employees, each making \$50,000 per year, with two charges would pay \$9,600 in taxes for the year if the benefits are not charged and \$12,300 if they are charged- an increase of \$2,700. In the third scenario, an employer in rate class 40 with 100 employees, each making \$50,000 per year, with two charges would pay \$286,000 in taxes for the year if the benefits are not charged and the same amount if they are charged since rate class forty is the highest rate class.

ESD has estimated that the proposed benefit charges will decrease the Trust Fund balance by \$15,312,240 in 2020. If the benefit charges are socialized, the non-charged employer's experience tax rate will not increase, but under this scenario, neither will the employers social tax rate. The flat social tax is calculated by subtracting total taxes paid statewide from total benefit payments over the prior 4 quarter period (July-June). This amount is then divided by total taxable payrolls and expressed as a percentage. When the estimated reduction of the Trust Fund balance is inserted into the calculation, the flat social tax number remains the same, which results in no change to the social tax in 2020 for the non-charged employer.

Introduction

Governor Jay Inslee signed Engrossed Substitute Senate Bill 5473¹ (SB 5473) into law on March 27, 2020. SB 5473 directed the Employment Security Department (ESD) to analyze the law surrounding voluntary quits in Washington state and the remaining 49 states, as well as the fiscal impacts that would result from expanding nondisqualifying reasons for voluntarily quitting one's job. The bill required ESD to report back to the Governor and Legislature by November 6, 2020.²

SB 5473 is a culmination of three separate bills regarding voluntary quits that moved through the Washington state Legislature during the 2019 and 2020 sessions.³ Each of the three precursor bills would have added one additional reason that an individual could voluntarily quit their job and still qualify for benefits. SB 5473 directs ESD to study these three reasons: (1) care for a child or vulnerable adult became inaccessible and the claimant's reasonable efforts to retain employment were unsuccessful;⁴ (2) the employer significantly changed working conditions or substantially increased job duties without a commensurate change pay;⁵ (3) the claimant relocated out of the labor market to be in closer proximity to a minor child.⁶

For each reason, ESD must study the impacts on the Unemployment Insurance Trust Fund (the Trust Fund) of allowing such benefits in situations where the benefits are charged to employer experience accounts and, alternatively, when they are not charged to employers' experience rating accounts.⁷ ESD is to provide recommendations for how the the statutes and rules might be amended to account for the expanded reasons for quitting that attempt to limit adverse fiscal impacts to the Trust Fund and contribution rates of employers.⁸

ESD may also consider Washington's existing and prior laws, regulations, and case law that would disqualify a claimant for voluntarily leaving work without good cause.⁹ Laws and regulatuions from other states and any other relevant information were also suggested as topics to be included in this report.¹⁰

¹ S.B. 5473, Laws of 2020, ch. 190 (titled: "An act relating to studying exceptions to provisions disqualifying individuals from receiving unemployment benefits for leaving work voluntarily without good cause; creating new sections; and providing an expiration date").

² *Id.* § 2(3).

³ H.B. 1445, 66th Leg., Reg. Sess. (Wash. 2019) (titled: "An act relating to making unemployment benefits accessible to people with family responsibilities and other availability issues . . ."); S.B. 6235, 66th Leg., Reg. Sess. (Wash. 2020) (titled "An act relating to exceptions to disqualification for unemployment insurance benefits when voluntarily leaving employment due to increases in job duties or changes in working conditions . . ."); S.B. 6620, 66th Leg., Reg. Sess. (Wash. 2020) (titled: "An act relating to exceptions to disqualification for unemployment insurance benefits when voluntarily leaving employment due to location and the separation from a minor child . . .").

⁴ S.B. 5473 § 1(2)(a) ("The separation was necessary because care for a child or a vulnerable adult in the claimant's care is inaccessible, so long as the claimant made reasonable efforts to preserve the employment status by requesting a leave of absence or changes in working conditions or work schedule that would accommodate the caregiving inaccessibility, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment.").

⁵ *Id.* § 1(2)(b) ("The employer, without a commensurate change in pay: (i) Substantially increases the individual's job duties; or (ii) Significantly changes the individual's working conditions.").

⁶ *Id.* § 1(2)(c) ("The individual left work to relocate outside the existing labor market because of the geographical location of or proximity to and the separation from a minor child.").

⁷ *Id.* § 2(1).

⁸ *Id.* § 2(3)(b).

⁹ *Id.* § 2(2)(a).

¹⁰ *Id.* § 2(2)(b)-(c).

Legal background on benefit eligibility in voluntary quit situations

Background

The intent of the legislature in passing this bill was to ensure that the state’s unemployment system addresses the “needs of employees with caregiving and other responsibilities and taking into account changes at the workplace.”¹¹ SB 5473 states that the original purpose of unemployment insurance was to “ease the burden of involuntary unemployment upon individual employees and the economy as a whole,” and that Washington’s “current framework places unnecessary barriers to this insurance benefit in the way of workers, frequently low-wage employees.”¹² Concerns over expanding Washington’s voluntary quit laws center on the potential financial impacts that such statutory changes could have both on employer contribution rates and the solvency of the Trust Fund. This study aims to address these considerations in contemplating changes to the voluntary quit statute.

Methodology

First, ESD conducted a comprehensive review of Washington law. This included an analysis of all revisions to the pertinent statutes since the law was first implemented in 1937 and related law review articles. ESD also did an in-depth analysis of related case law, including a review of precedential and nonprecedential decisions from ESD’s Commissioner’s Review Office and all Washington appellate court decisions on this topic.

The analysis then expanded to a review of statutes, regulations and case law from other states. This study also gathered necessary data from other states’ published unemployment policies in the form of benefit policy manuals, appeals bench manuals and collections of precedential administrative decisions.

In addition, the following resources were consulted: subject matter experts from the Unemployment Law Project, the Association of Washington Business, the National Association of Workforce Agencies, information from stakeholder groups including the National Employment Law Project, and reports from the United States Department of Labor regarding comparison of state laws on voluntary quits. ESD also contacted unemployment insurance agencies of other states, requesting pertinent data and any recent studies.

Washington’s laws

This section outlines Washington’s laws on voluntary quits. It describes the history of voluntary quit laws in this state, and how the law has narrowed since its inception in 1937. It then outlines the current legal framework for voluntary quit laws, specifically focusing on laws relating to good cause, claimant availability, and suitability of work.

A. History of voluntary quits in Washington state

While voluntarily leaving one’s work without good cause has always been a disqualifying circumstance under Washington’s Employment Security Act (the Act), substantial changes in what qualifies as “good cause” have occurred since the Act’s inception in 1937.¹³

¹¹ *Id.* § 1(1).

¹² *Id.*

¹³ For an in-depth description of how unemployment law has evolved in Washington state since 1937, see Emily Toler, ‘Without Good Cause’: The Case for a Standard-Based Approach to Determining Worker Qualification for Unemployment Benefits, 89 WASH. L. REV. 559 (2014).

The original version of the Act left “good cause” undefined, leaving it up to ESD’s Commissioner to determine whether a situation amounted to good cause.¹⁴ Until 1977, the commissioner found that a claimant had good cause to quit their employment if they had “compelling personal reasons” for doing so.¹⁵ “Compelling personal reasons” could include a sudden loss of childcare¹⁶ or being unable to accommodate an employer-initiated shift change that makes childcare inaccessible.¹⁷ Additionally, situations where an employer failed to uphold the initial conditions of employment provided grounds for a claimant to quit their job.¹⁸ Mere dissatisfaction with working conditions, however, was not sufficient to amount to good cause.¹⁹ In addition to showing that there were compelling personal reasons, the claimant also had to show that they unsuccessfully tried to retain their employment and had no reasonable alternative to quitting.²⁰

In 1977, the legislature amended the Act to restrict the definition of good cause to situations that were connected with the employment.²¹ As such, the new version of the Act implicitly excluded domestic circumstances from “good cause.”²² While the new version of the Act explicitly disqualified quits that were based on working conditions that were present when the claimant began their employment, the Commissioner had leeway to find good cause if the conditions present at the outset of employment had substantially deteriorated or if they would “work an unconscionable hardship on the individual” if they were made to continue working in that job.²³ A change in working conditions that made the work unreasonable would also amount to good cause.²⁴ As a result, claimants who had to quit on account of inaccessible childcare or relocating to be closer to their minor child were denied benefits,²⁵ but claimants who quit on account of their employer substantially changing the terms of their employment remained eligible.²⁶

¹⁴ Unemployment Compensation Act, Laws of 1937 ch. 162 § 5(a) (codified as amended at RCW 50.20.050).

¹⁵ See *In re Morse*, Empl. Sec. Comm’r Dec. 157 (1955); *In re Tuai*, Empl. Sec. Comm’r Dec. 162 (1955); *In re Jones*, Empl. Sec. Comm’r Dec. 964 (1973).

¹⁶ In one case, a claimant lost her childcare and was unable to find a suitable alternative so that she could keep her job. *In re Odanovich*, Empl. Sec. Comm’r Dec. 1202 (1974) (“We have consistently held that the duty of a parent to his or her family is paramount to the duty one owes to the employer”).

¹⁷ *In re Christie*, Empl. Sec. Comm’r Dec.2d 262 (1976).

¹⁸ *In re Johnson*, Empl. Sec. Comm’r Dec. 504 (1958) (“[A]ny employee has a right to terminate his employment whenever his employer fails to fulfill the terms of the contract of hire, and a termination under such circumstances is considered to be with ‘good cause.’”).

¹⁹ *In re Dietz*, Empl. Sec. Comm’r Dec. 1060 (1973).

²⁰ *In re Jones*, Empl. Sec. Comm’r Dec. 964 (1973) (“[T]he individual [must have] made every reasonable effort to preserve the employee-employer relationship”); see *In re Morse*, Empl. Sec. Comm’r Dec. 157 (1955) (finding that the claimant had good cause to quit when there was a “strong likelihood that [he] . . . would have been ‘black-listed’ by his own union if he had” not quit); *In re Tuai*, Empl. Sec. Comm’r Dec. 162 (1955) (disallowing benefits when the claimant failed to contact her union about her grievance until after quitting).

²¹ Specifically, the 1977 amendment retained its “good cause” language but restricted the commissioner’s discretion to work-related reasons for quitting. Laws of 1977, 1st Ex. Sess., ch. 33, § 4. The Legislature clarified the exclusive work-related scope of good cause in 1982 by stating that the commissioner was to “only consider work-connected factors” when determining whether good cause existed. Laws of 1982, 1st Ex. Sess., ch. 18, § 6. See also *Davis v. Emp. Sec. Dep’t*, 108 Wn.2d 272, 277, 737 P.2d 1262, 1256 (1987) (holding that the 1977 amendments restricted good cause to work-related reasons).

²² Laws of 1977, 1st Ex. Sess., ch. 33, § 4.

²³ *Id.* In 1980, the Legislature amended the statute to change the language to an “unreasonable” hardship. Laws of 1980, ch. 74, § 5.

²⁴ See *In re Vickers*, Empl. Sec. Comm’r Dec.2d 657 (1981) (leaving was with good cause when employer assigned claimant the work of two people which made it impossible for him to eat lunch); *In re Wright*, Empl. Sec. Comm’r Dec.2d 814 (1990) (quitting was with good cause when the mother of the claimant’s patient demanded that he perform additional duties at their home which were outside the scope of his employment).

²⁵ *In re Cox*, Empl. Sec. Comm’r Dec.2d 614 (1980) (denying benefits to a mother who relocated to be closer to her minor child, over whom she had joint custody).

²⁶ *In re Groulx*, Empl. Sec. Comm’r Dec.2d 431 (1978).

In 2003, the legislature eliminated the language that directed the Commissioner to consider certain factors in determining good cause and replaced it with a list of 10 specific reasons for quitting that would be good cause.²⁷ But the statute did not state that those 10 reasons were exclusive.²⁸ As such, a brief period followed in which the Commissioner still had discretion to find good cause.²⁹

In 2009, the Legislature made it clear that the list was exclusive and expanded the list from 10 reasons to 12.³⁰ Afterwards, only claimants who could show one of the enumerated reasons in the statute could successfully obtain benefits. Currently, ESD denies the claims of individuals who quit their jobs due to inaccessible care for a child or vulnerable adult,³¹ due to changes in working conditions or job duties without a commensurate increase of pay, or to relocate to be nearer to their minor child.

B. Current framework

Claimants who have voluntarily quit their employment must demonstrate that they quit for good cause, are currently available for work, and have not failed to seek or accept suitable work.

(i) Good cause

The current version of the Act lists 12 exclusive reasons for good cause, allowing voluntary quits when claimants leave work because:

- (i) they left to accept a bona fide offer of bona fide work;
- (ii) they or a member of their family had an illness or disability that made quitting necessary;
- (iii) their spouse or domestic partner relocated outside the existing labor market;
- (iv) leaving was necessary to protect themselves or a member of their family from domestic violence;
- (v) their employer reduced their compensation by 25 percent or more;
- (vi) their employer reduced their hours by 25 percent or more;
- (vii) their worksite changed, materially increasing their commute in length or difficulty;
- (viii) they notified their employer that the safety of their worksite deteriorated but the employer did not fix the problem;
- (ix) they notified their employer about illegal activities occurring at their worksite and the employer did not fix the problem;
- (x) their employer changed their usual work to work that violates the claimants' religious convictions or beliefs;
- (xi) they left to enter an apprenticeship program approved by the Washington state apprenticeship council;³² or
- (xii) they worked both a full-time job and a part-time job and quit the part-time work.³³

²⁷ Laws of 2003, 2d Spec. Sess., ch. 4, § 4.

²⁸ *Id.*

²⁹ See *id.*; *Spain v. Emp. Sec. Dep't*, 164 Wn.2d 252, 260, 185 P.3d 1188, 1192 (2008) (overturning lower court rulings that held that the reasons for good cause listed in RCW 50.20.050 were exclusive).

³⁰ Laws of 2009, ch. 493, § 3 ("Good cause reasons to leave work are limited to [the] . . . reasons listed.").

³¹ See, e.g., *Sennott v. Emp. Sec. Dep't*, 9 Wn. App. 2d 1061, 2019 WL 3110780 (2019) (unreported).

³² RCW 50.20.050(2)(b); Laws of 2009, ch. 493, § 3.

³³ RCW 50.20.050(3); Laws of 2009, ch. 247, § 1. In 2009, the voluntary quit statute was edited twice by the Legislature, each without reference to the other.

If a claimant has left their job voluntarily and cannot claim one of these reasons for the job separation, they will likely be disqualified from receiving benefits.³⁴ By omission, the statute denies benefits to those quitting due to inaccessible care, relocating to be near a minor child, or because their employer refused to increase their pay after substantially changing their working conditions or increasing their job duties.

One provision in the good cause statute is similar to the reason for quitting on account of substantial changes in the workplace without a commensurate increase in pay: when the claimant's "usual compensation" is reduced by 25 percent or more.³⁵ Despite its similarity to the reason for good cause proposed by SB 5473, it is interpreted in such a way that it will not allow people to quit for the work-related reason proposed by the bill. "Usual compensation" relates only to actual take-home pay.³⁶ This definition does not take the *rate* of pay into account. This typically disqualifies any claimant that has quit because their employer required them to work more hours but would not increase their take-home pay. In some cases, however, if a claimant's reason for quitting is work-related but does not fit or qualify as one of the statutory reasons for good cause, they may still qualify for benefits.

Some claimants who quit on account of changed working conditions or increased job duties may qualify for benefits under a narrow exception for refusing "new work." Federal law prohibits states from denying benefits to claimants who have refused to accept "new work" that offers working conditions that are "substantially less favorable to the individual than those prevailing for similar work in the area."³⁷ Washington defines "new work" as including situations where an individual's current employer tries to change the job duties or other conditions in the existing working agreement.³⁸ The caveats are that the changes in working conditions must be substantial, those changes were not authorized by the existing agreement, and the claimant must have refused the offer immediately.³⁹ The change is not substantial if the working conditions are typical for similar occupations in the area,⁴⁰ or if the employer reduced the claimant's wages or hours by 10 percent or less.⁴¹

The reason a claimant voluntarily quit their job could impact employers' tax rates. Employers pay both a social tax and an experience rating tax.⁴² Some benefits are not charged to individual employers but are socialized and paid by all employers in the state. The amount of these benefits contributes to the rate of the social tax. The employer experience rating is unique to each employer and directly correlates to the amount of benefits paid out to that employer's former employees. But, in the voluntary quit scheme, benefits affect an employer's experience rating account only when the claimant had good cause and that reason for quitting was related to work.⁴³ Work-related factors

³⁴ RCW 50.20.050(2).

³⁵ See RCW 50.20.050(2)(b)(v).

³⁶ See WAC 192-150-115(2) ("Usual" includes amounts actually paid to you . . . [or] the compensation agreed upon" in the employment agreement.).

³⁷ 26 U.S.C. § 3304(a)(5)(B).

³⁸ WAC 192-150-150(2). "Conditions" as used in this section includes "fringe benefits . . . paid sick, vacation, and annual leave; provisions for leaves of absence and holiday leave; pensions, annuities and retirement provisions; [] severance pay; job security and reemployment rights; training and promotion policies; wage guarantees; unionization; grievance procedures; work rules, including health and safety rules; medical and welfare programs; physical conditions such as heat, light and ventilation; shifts of employment; and permanency of work." WAC 192-150-150(4)(a).

³⁹ WAC 192-150-150(3). Cf. WAC 192-150-145 (allowing claimants who qualify under one of the five good cause reasons relating to working conditions to try out the new working conditions for a "brief period of time" without penalty). *But see* WAC 192-150-150(3)(b)(ii) (allowing claimants to qualify for benefits under the refusal of new work exception when they continued working for a period after they give notice of quitting or when they engaged in "an employer-provided grievance or arbitration period in response to the change").

⁴⁰ WAC 192-150-150(4)(b), (d).

⁴¹ *Id.* at (3)(b)(i).

⁴² Employers also pay an administrative tax, which in addition to the social tax and the experience rating tax, determine the percentage the employer must pay.

⁴³ WAC 192-320-070(1)-(2).

include: a change in work location that significantly increases the distance or difficulty of travel and is also greater than customary for other workers in the same situation and labor market, the employer failed to repair deteriorated worksite safety despite having notice and a reasonable period of time to fix the problem, the employee's skills were no longer needed for the job, a reduction in hours, a reduction in pay, notification of an impending layoff, or other work-related factors that the Commissioner finds pertinent. In the same vein, Washington law specifically excludes attributing benefits to an employer when a claimant voluntarily quits with good cause but their reason for quitting was not work-related, such as following a spouse to a new location, escaping domestic violence, or entering an apprenticeship program.⁴⁴ If the claimant quit their job for one of those reasons, or some other reason that is unrelated to work, their benefits affect the social tax. In other words, every benefit charge for a voluntary quit without connection to employment contributes to an increase in the social tax.

The total of an administrative tax, the social tax, and the experience rating tax combine to create the employer's total tax rate for unemployment insurance. But employers do not pay taxes on the entire amount they pay out in wages. They pay only up to a certain amount, called the "taxable wage base," set by state and federal law. Federal law sets the minimum taxable wage base at \$7,000 but allows states to set higher minimum taxable wage bases for their unemployment insurance programs. Washington, along with 46 other states, sets the taxable wage base higher.⁴⁵ In 2019, Washington had the second highest taxable wage base in the nation.⁴⁶ Our state also pays out one of the highest weekly benefit amounts to qualifying claimants.⁴⁷

(ii) Availability

Claimants must also be available for work.⁴⁸ Federal law requires that all unemployment recipients are available for work in the week which they submit a claim.⁴⁹ Non-withdrawal from the labor market is the only real criterion for availability at the federal level,⁵⁰ but states are able to impose greater requirements for eligibility.⁵¹

Washington requires more than a general attachment to the labor force. Washington's unemployment regulations do not permit a claimant to restrict the hours, days, or shifts for which they are available.⁵² The current rule on availability requires that the claimant be willing to work "during all of the usual hours and days of the week customary for [their] occupation."⁵³ ESD has proposed changes to availability rule to better accommodate claimants with caregiving responsibilities. Under the new rule, a claimant would be available as long as they are available "for at least forty hours during the week during the hours customary" for the claimant's occupation.⁵⁴

⁴⁴ RCW 50.29.021(2)(e); WAC 192-320-070(1)-(2).

⁴⁵ U.S. Dep't Lab., Comparison of State Unemployment Insurance Laws 2.4-5.

⁴⁶ *Id.*

⁴⁷ *Id.* at 3.11-12.

⁴⁸ RCW 50.20.010(c).

⁴⁹ 20 C.F.R. § 604.3(a) ("A State may pay [unemployment compensation] only to an individual who is . . . available for work for the week for which [it] is claimed").

⁵⁰ See *id.* However, if the claimant left work because care was inaccessible, and that care continues to be inaccessible during weeks that they try to claim benefits, they could be unavailable. *Id.* at (c).

⁵¹ 20 C.F.R. § 604.3(c).

⁵² See WAC 192-170-010(a). This rule applies unless ESD determines that the individual has a disability that prevents them from working the full-time hours that are customary in the occupation. WAC 192-170-050(1)(b).

⁵³ WAC 192-170-010(1)(a).

⁵⁴ See Wash. St. Reg. 20-03-102.

(iii) Suitability

When claimants are on unemployment benefits, they are only expected to seek or accept “suitable work.” ESD determines whether work is suitable based on a list of factors which the Legislature has enumerated. The enumerated factors are: prior experience, education, and training; potential risks to their health, safety and morals; their physical fitness; how long they have been unemployed and their local work prospects; commuting distance from their home; and “such other factors as the commissioner may deem pertinent.”⁵⁵ Claimants who refuse to accept suitable work will be disqualified from receiving benefits.⁵⁶ A claimant must be willing and able to immediately accept “any suitable work.”⁵⁷

When a claimant has restrictions on their hours of availability for work, they might also have trouble maintaining eligibility for refusing “suitable work.” If a claimant gets a job offer from an employer during a time they are not available, they will be disqualified because ESD cannot take shift or hour restrictions into account when determining suitability. Although the Legislature has granted the Commissioner some discretion relating to suitability factors, the Commissioner does not currently deem work hour restrictions to be a pertinent factor. However, ESD has proposed a rule change to amend the suitability factors to include the shifts one normally works.⁵⁸

Nationwide laws

This study surveys the statutes, regulations, and case law of the other 49 states. Because SB 5473 directed ESD to report on disqualifications for benefits in other states, this study does not provide a comprehensive comparison between Washington and other states’ unemployment insurance programs. Instead, this study focuses on how the law in other states regarding voluntary quits differs from Washington’s laws. In particular, the study focuses on how other states treat the three reasons for voluntarily quitting listed in SB 5473.

Washington’s statutory voluntary quit framework is quite different from the frameworks adopted in other states. As noted above, Washington has limited permissible voluntary quits to twelve exclusive reasons, and those reasons are interpreted fairly narrowly.⁵⁹ South Dakota and Colorado are the only other states that enumerate the reasons for quitting with good cause so specifically and narrowly.⁶⁰ Both of these states list circumstances that might occur at work that would compel someone to quit, just as Washington does. South Dakota’s enumerated list is slightly more restrictive than Washington’s: it enumerates only eight permissible reasons for quitting, five of which are related to employment and three for personal and safety reasons.⁶¹ In contrast, Colorado enumerates twenty reasons, eleven of which are work related.⁶² Maryland, Minnesota, and Wisconsin also enumerate the permissible reasons for voluntarily quitting with good cause, but these states all include a broad allowance for quits that are related to employment.⁶³

⁵⁵ RCW 50.20.100(1).

⁵⁶ RCW 50.20.080.

⁵⁷ RCW 50.20.010(1)(c)(i).

⁵⁸ Wash. St. Reg. 20-03-102.

⁵⁹ See *supra* notes 32–34 and accompanying text.

⁶⁰ **Colorado:** COLO. REV. STAT. § 8-73-108(4). **South Dakota:** S.D. CODIFIED LAWS §§ 61-6-9, 61-6-9.1.

⁶¹ S.D. CODIFIED LAWS §§ 61-6-9, 61-6-9.1.

⁶² COLO. REV. STAT. § 8-73-108(4) (excluding the post-COVID-19-pandemic amendments which add additional reasons for good cause, the reasons amount to 20).

⁶³ **Maryland:** MD. CODE, LABOR & EMPLOY. § 8-1001. **Minnesota:** MINN. STAT. § 268.095. **Wisconsin:** WIS. STAT. § 108.04.

The remaining states do not define good cause so specifically. Instead, some merely require that the claimant had “good cause,”⁶⁴ while others require that good cause be “connected with employment.”⁶⁵ Most of these states provide for other non-disqualifying situations that would compel someone to quit, for example, quitting on account of compelling personal reasons, following a spouse to a new job market or to avoid domestic violence.

In all states, the law offers claimants similar ways to avoid disqualification. Claimants must show that they left work involuntarily, the work was unsuitable, or that they left for good cause. Next, they must show they are available for work. Just over half of the states disqualify claimants from receiving benefits when they restrict the hours, days, or shifts they are willing to work.

This study does not consider the recent changes to the law made in response to COVID-19. See the appendix for further discussion of the effects from ESD’s COVID-19 response on unemployment law.

A. Inaccessible care for a child or vulnerable adult

Loss of accessible care for a child or vulnerable adult can present barriers to benefit eligibility. The claimant must show that they either left involuntarily or that they had good cause to quit. Additionally, they must also show that despite not having access to care at the time that they quit, the situation will not make them unavailable for work in the future.

This study does not take into account situations where the claimant left due to illness or disability of a member of the claimant’s family. Washington’s current legal framework already covers these circumstances.⁶⁶

(i) Inaccessible care as a non-disqualifying reason for quitting

This study focuses on two situations in which a claimant may have left a job because care was inaccessible: (1) the claimant is unable to find care, or (2) when a claimant’s employer changes their work schedule, leaving them with a choice between going to work and taking care of a child or a vulnerable adult for whom they are responsible.

(a) Inaccessible care

Care may be inaccessible through no fault of the claimant or their employer. For example, a claimant may be forced to choose between going to work or watching their infant after their babysitter unexpectedly quits and no other caregiving options are available. Alternatively, an individual may unexpectedly assume a duty to care for another person and cannot find care. Fourteen states allow a loss of care to be a non-disqualifying reason for quitting: Arizona, California, Hawaii, Illinois, Kansas, Massachusetts, Minnesota, Nevada, New York, Oregon,

⁶⁴ **Alaska:** ALASKA STAT. § 23.20.379. **California:** CAL. UNEMP. INS. CODE § 1256. **Hawaii:** HAW. REV. STAT. § 383-30. **Mississippi:** MISS. CODE § 71-5-513. **Nebraska:** NEB. REV. STAT. § 48-628.12. **Nevada:** NEV. REV. STAT. § 612.380. **New Hampshire:** N.H. REV. STAT. § 282-A:32 (requiring only “good cause” as determined by the commissioner by statute); N.H. CODE ADMIN. R. EMP. 503.01(a)(1) (defining “good cause” as connected to employment). **New York:** N.Y. LAB. LAW § 593. **Ohio:** OHIO REV. CODE § 4141.29. **Oregon:** OR. REV. STAT. § 657.176. **Pennsylvania:** 43 PA. STAT. AND CONS. STAT. § 802. **Rhode Island:** 28 R.I. GEN. LAWS § 28-44-17. **South Carolina:** S.C. CODE § 41-35-120. **Utah:** UTAH CODE § 35A-4-405. **Virginia:** VA. CODE § 60.2-618.

⁶⁵ **Alabama:** ALA. CODE. § 25-4-78. **Arizona:** ARIZ. REV. STAT. § 23-775. **Arkansas:** ARK. CODE § 11-10-513. **Connecticut:** CONN. GEN. STAT. § 31-236(2)(A). **Delaware:** DEL. CODE tit. 19, § 3314. **Florida:** FLA. STAT. § 443.101. **Georgia:** GA. CODE § 34-8-194. **Idaho:** IDAHO CODE § 72-1366. **Illinois:** 820 ILL. COMP. STAT. 405/601. **Indiana:** IND. CODE § 22-4-15-1. **Iowa:** IOWA CODE § 96.5. **Kansas:** KAN. STAT. § 44-706. **Kentucky:** KY. REV. STAT. § 341.370. **Louisiana:** LA. STAT. § 23:1601. **Maine:** ME. STAT. tit. 26, § 1193. **Massachusetts:** MASS. GEN. LAWS ch., 151A, § 25. **Michigan:** MICH. COMP. LAWS § 421.29. **Missouri:** MO. REV. STAT. § 288.050. **Montana:** MONT. CODE § 39-51-2302. **New Jersey:** N.J. STAT. § 43:21-5. **New Mexico:** N.M. STAT. § 51-1-7. **North Carolina:** N.C. GEN. STAT. § 96-14.5. **North Dakota:** N.D. CENT. CODE § 52-06-02. **Oklahoma:** OKLA. STAT. tit. 40 § 2-404. **Tennessee:** TENN. CODE § 50-7-303. **Texas:** TEX. LAB. CODE § 207.045. **Vermont:** VT. STAT. 21 § 1344. **West Virginia:** W. VA. CODE § 21A-6-3. **Wyoming:** WYO. STAT. § 27-3-311.

⁶⁶ RCW 50.20.050(2)(b)(ii) (in both amended versions 2009 c247 and c493).

Pennsylvania, Rhode Island, Utah and Virginia.⁶⁷ Among these states, eight do not charge benefits paid to claimants under this rationale to the employers' experience rating accounts.⁶⁸ Four of the thirteen states have specifically envisioned a loss of care as being a non-disqualifying reason for voluntarily quitting in codified laws and regulations.⁶⁹ The remaining ten states allow this through interpretation of open-ended statutory language that provide exceptions to disqualification.⁷⁰ Additionally, most of these states consider a loss of care to be equivalent to good cause for voluntarily quitting, but a minority view this as an involuntary quit—which essentially means that they did not quit but were laid off.⁷¹ The clear theme among every state that allows this is that the claimant must try to fix the problem before quitting, usually by attempting to find new care and requesting accommodations from the employer.

While all of the previously mentioned fourteen states allow quitting due to lack of access to childcare, the answer is less clear in cases where the claimant leaves to take care of a vulnerable adult. Only a couple of states are clear on the issue. California is the only state that explicitly envisions vulnerable adult care in its regulations, mentioning that leaving due to a need to care for an “elderly” adult who is unable to care for themselves is one of many compelling domestic reasons for quitting that would be non-disqualifying.⁷² Arizona allows quitting on account of inaccessible care for vulnerable adults, but only when they are disabled or ill.⁷³ In contrast, Minnesota excludes adults from its non-disqualifying care provision by specifying that the care must be for the claimant’s “minor child.”⁷⁴ The remaining states do not provide clear guidance on whether their care provisions include care for vulnerable adults, but seem likely to do so based on their broad statutory language.⁷⁵

⁶⁷ **Arizona:** ARIZ. ADMIN. CODE § R6-3-50360. **California:** CAL. CODE REGS. tit. 22, § 1256-10(c)(4)–(5). **Hawaii:** Communications with Hawaii’s Department of Labor and Industrial Relations has confirmed that a claimant would likely qualify for benefits under these circumstances. See HAW. REV. STAT. § 383-30 (requiring only “good cause”). **Illinois:** ILL. ADMIN. CODE tit. 56, § 2840.101(a)(4). **Kansas:** KAN. STAT. § 44-706(a)(11). **Massachusetts:** MASS. GEN. LAWS ch., 151A, § 25(e); *Zukoski v. Dir. Of Div. of Emp. Sec.*, 459 N.E. 2d 467, 468 (Mass. 1984). **Minnesota:** MINN. STAT. § 268.095.1(8) (in the same location in both versions). **Nevada:** NEV. REV. STAT. § 612.380 (requiring only “good cause”); NEV. UNEMP. COMP. PROGRAM, NEV. APPEALS HANDBOOK (2018) (defining good cause as including “personal reasons”). **New York:** N.Y. LAB. LAW § 593(1). **Oregon:** OR. ADMIN. R. 471-030-0038(4) (allowing compelling family reasons to be good cause). **Pennsylvania:** 43 PA. CONS. STAT. § 802(b); *Hosp. Svc. Ass’n of Ne. Penn. v. Unemp. Comp. Bd. of Rev.*, 476 A.2d 516 (Pa. Cmwlth. 1984). **Rhode Island:** 28 R.I. GEN. LAWS § 28-44-17(a). **Virginia:** VIRGINIA EMP. COMM’N, GUIDE FOR EFFECTIVE UNEMPLOYMENT INSURANCE ADJUDICATION 75 (2010) available at <https://www.vec.virginia.gov/vecportal/unins/pdf/effectiveuiadjudication.pdf>. **Utah:** UTAH CODE § 35A-4-405(1)(a); UTAH ADMIN CODE r. 994-405-102(1)(a).

⁶⁸ **Arizona:** ARIZ. ADMIN. CODE § R6-3-5005(B). **Hawaii:** HAW. REV. STAT. § 383-65(b)(1)(C). **Kansas:** KAN. STAT. § 44-710(c)(2)(A). **Massachusetts:** MASS. GEN. LAWS ch., 151A § 14. **Minnesota:** MINN. STAT. § 268.047.3(2). **Pennsylvania:** 43 PA. CONS. STAT. § 782.1. **Utah:** Utah Code § 35A-4-3307.

⁶⁹ Minnesota has included this in its statutory law. MINN. STAT. § 268.095. Arizona, California, and Illinois allow this in their regulatory code. ARIZ. ADMIN. CODE § R6-3-50360; CAL. CODE REGS. tit. 22, § 1256-10(c)(4)–(5); ILL. ADMIN. CODE tit. 2840, § 101.

⁷⁰ **Hawaii:** Hawaii’s Department of Labor has advised us that its unemployment insurance Commissioner would likely find good cause pursuant to HAW. REV. STAT. § 383-30 (requiring only good cause); **Massachusetts:** MASS. GEN. LAWS ch., 151A, § 25; *Zukoski v. Dir. Of Div. of Emp. Sec.*, 459 N.E. 2d 467 (Mass. 1984). **Pennsylvania:** 43 PA. STAT. AND CONS. STAT. § 802; *Truitt v. Unemp. Comp. Bd. of Rev.*, 589 A.2d 208 (Pa. 1991). **Virginia:** VA. CODE § 60.2-618; *Phillips v. Dan River Mills Inc*, Commission Decision 2002-C (June 15, 1955).

⁷¹ Illinois and Massachusetts view these separations as involuntary. See ILL. ADMIN. CODE tit. 56, § 2840.101 (“By presenting the individual with the choice between keeping [their] job and ensuring [their] . . . children were properly attended, the employer did not provide the individual with the opportunity to remain employed”); MASS. GEN. LAWS ch., 151A, § 25 (“An individual shall not be disqualified . . . [if their] reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary”); *Zukoski v. Dir. Of Div. of Emp. Sec.*, 459 N.E. 2d 467 (Mass. 1984) (holding that since domestic responsibilities can serve as grounds for restricting one’s availability, the same grounds can be used to find that a separation was involuntary).

⁷² CAL. CODE REGS. tit. 22, § 1256-10(c)(4).

⁷³ ARIZ. ADMIN. CODE § R6-3-50360.

⁷⁴ MINN. STAT. § 268.095.

⁷⁵ For example, Virginia’s commissioner has allowed a claimant to leave work so that she could care for her “ill and infirm” parents at the suggestion of their physician. *Phillips v. Dan River Mills Inc*, Commission Decision 2002-C (June 15, 1955).

(b) Employer-initiated shift change causes inaccessibility of care

Sometimes an act by an employer is the catalyst for care becoming inaccessible. For example, an employer may switch their employee from day to night shifts. That employee could then be unable to find care for their child or vulnerable adult during the evening. This could force the employee to quit. Two-thirds of states allow quits for this reason in some form. Just under half of these states allow a shift change that makes care inaccessible to amount to good cause on its own, but the rest require additional factors like the change being substantial or that the employer breached the employment contract.

At least one state does not consider a shift change that makes childcare inaccessible to be good cause for quitting, primarily because it determined that the employer's action was not a catalyst for the separation.⁷⁶ This rule applies in Alabama, which requires that good cause be "connected" with employment.⁷⁷ In one case in that state, a claimant quit because his employer took him off the morning shift and moved him to the evening shift, which would make his childcare expenses unaffordable.⁷⁸ The court ruled that since the claimant could not show how his childcare issues were "connected with conditions or circumstances of his employment" and since his employer was not required to provide childcare, that he quit without good cause.⁷⁹

In contrast, at least 16 states unconditionally allow a shift change that makes care inaccessible to be a non-disqualifying reason for quitting.⁸⁰ Wisconsin has expressly envisioned this as amounting to good cause in its statutory law.⁸¹ Specifically, the statute allows claimants to quit if they are "hired to work a particular shift" and their employer required that they move to a different shift that would make care for their minor child inaccessible.⁸² Additionally, the claimant must be available for the same shift that they were working before and that they are available for full-time work.⁸³

⁷⁶ *McNealey v. State Dep't of Indus. Relations*, 664 So.2d 913, 914 (Ala. Civ. App. 1995).

⁷⁷ ALA. CODE § 25-4-78(2).

⁷⁸ *McNealey*, 664 So.2d at 914.

⁷⁹ *Id.* at 915.

⁸⁰ **Arizona:** ARIZ. ADMIN. CODE §§ R6-3-5495, R6-3-50450. **Arkansas:** Arkansas' Division of Workforce Services has confirmed this to ESD. **California:** CAL. CODE REGS. tit. 22, § 1256-10. **Delaware:** *White v. Security Link*, 658 A.2d 619 (Del. 1994). **Hawaii:** HAW. REV. STAT. § 383-30. **Illinois:** ILL. ADMIN. CODE tit. 2840, § 101. **Maine:** 12-72-9 ME. CODE R. § 5 (allowing leaving due to work schedule in some circumstances); ME. STAT. tit. 26, § 1192 (attaching condition that shift workers must be available for all shifts, except for those with childcare responsibilities, who are not required to work most of their hours between 12 a.m.–5 a.m.). **Nevada:** NEV. REV. STAT. § 612.380; see *Burwell v. Nev. Dep't of Emp., Training, and Rehab.*, 281 P.3d 1158 (Nev. 2009) (unpublished decision) (disqualifying claimant for sole reason of not seeking out alternative arrangements with employer before quitting due to childcare inaccessibility). **New Hampshire:** N.H. REV. STAT. § 282-A:39(3)(D), (E). **North Carolina:** *In re Watson*, 161 S.E. 2d 1 (N.C. 1968). **Pennsylvania:** *Hosp. Svc. Ass'n of Northeastern Penn. v. Unemp. Comp. Bd. of Rev.*, 476 A.2d 516 (Pa. Cmwlth. 1984). **Rhode Island:** 28 R.I. GEN. LAWS § 28-44-17; *Huntley v. Dep't of Emp. Sec., R.I.*, 397 A.2d 902, 905-06 (R.I. 1979). **South Carolina:** S.C. CODE § 41-35-120; *Judson Mills v. S.C. Unemp. Comp. Comm'n*, 28 S.E. 2d 535 (S.C. 1944). **Virginia:** VA. CODE § 60.2-618; *Phillips v. Dan River Mills Inc.*, Commission Decision 2002-C (June 15, 1995). **Wisconsin:** WIS. STAT. § 108.04(7)(cm).

⁸¹ WIS. STAT. § 108.04(7)(cm).

⁸² *Id.*

⁸³ WIS. STAT. § 108.04(7)(cm).

At least 17 other states allow a quit for this reason but attach additional conditions. Five states attach a condition that the change be substantial.⁸⁴ Thirteen states would require that the shift change would be a material breach of the original terms of employment, or an employment contract.⁸⁵

(ii) Restricting availability to certain shifts or hours due to care concerns

Just over half of the states allow claimants to impose reasonable restrictions on times, shifts, or days of the week in which they are available to work, while the rest disallow any restrictions on availability.⁸⁶ In those states that disallow restrictions on availability, many claimants who have care responsibilities during even limited times of the week may be disqualified from benefits.

Half of the states allow claimants to impose restrictions on their availability in some form.⁸⁷ These states tend to focus on certain facts more than others in determining whether the restriction on availability is permissible. Domestic responsibilities provide grounds for restrictions in several of these states. Other states in this group focus on factors like reasonableness, the claimant's occupation, the job market in the claimant's area, the claimant's previous availability restrictions, and whether the claimant is a shift worker.

Four states allow restrictions for general domestic responsibilities. For example, in Montana and Vermont, claimants with domestic responsibilities can restrict their availability if they can show good cause for the restriction.⁸⁸ New Hampshire's statutory law allows claimants to restrict their availability if they are the only adult available to care for a vulnerable adult or child. In New Hampshire, a vulnerable adult must be an "ill, infirm, or physically or mentally disabled family member whom a licensed physician has certified is in need of care for the activities of daily living."⁸⁹ Additionally, children must be a natural, adopted, step, or foster child who is under 16 years old.⁹⁰ Alaska also allows restrictions due to domestic responsibilities, specifically envisioning that the claimant could need to take care of a minor child, a parent, a spouse, or a more distant relative.⁹¹ To take advantage of this allowance in Alaska, the claimant needs to show both that there is a compelling reason to be unavailable at that time and that employment opportunities in their occupation are still available to them with the restriction.⁹²

⁸⁴ **Louisiana:** LA. STAT. § 23:1601(1)(a); *Louisiana Dep't of Corrections v. Admin'r, Louisiana Office of Emp. Sec.*, 457 So.2d 825 (La. Ct. App. 1984). **Nebraska:** *In re Konicek*, 04 Neb. App. Trib. 0584 (2004). **New York:** Appeal Board No. 544774. **North Dakota:** *Newland v. Job Serv. North Dakota*, 460 N.W.2d 118, 122–23 (N.D. 1990). **Ohio:** *Marietta Coal Co., Inc. v. Kirkbride*, 26 N.E. 3d 852, 856 (Ohio Ct. App. 2014).

⁸⁵ **Arkansas:** ESD has been advised this is the case by Arkansas' Division of Workforce Services; see ARK. STAT. § 11-10-513. **Connecticut:** CONN. AGENCIES REGS. tit. 22, § 1256-10. **Indiana:** *Indianapolis Osteopathic Hosp. v. Jones*, 669 N.E.2d 431, 434 (Ct. App. Ind. 1996). **Iowa:** IOWA ADMIN. CODE r. §871-24-26-1. **Kansas:** KAN. STAT. § 44-706(a)(10). **Kentucky:** *Nichols v. Ky. Unemp. Ins. Comm'n*, 677 S.W. 2d 317 (Ky. Ct. App. 1984). **Minnesota:** *Krantz v. Loxtercamp Transport, Inc.*, 410 N.W. 2d 24 (Minn. Ct. App. 1987). **South Dakota:** S.D. CODIFIED LAWS § 61-6-9.1. **Utah:** UTAH ADMIN CODE r. 994-405-102(3)(a). **Vermont:** *Skudlarek v. Dep't of Emp. & Training*, 627 A.2d 340 (Vt. 1993). **West Virginia:** *Murray v. Rutledge*, 327 S.E. 2d 403 (W. Va. 1985).

⁸⁶ This can be promulgated either in the state's availability or suitability provisions.

⁸⁷ Including Alaska, Arizona, California, Delaware, Florida, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Virginia. See *infra* notes 88-117 and accompanying text.

⁸⁸ **Montana:** MONT. ADMIN. R. 24.11.452A. **Vermont:** *Shufelt v. Dep't of Emp. & Training*, 531 A.2d 894 (Vt. 1987).

⁸⁹ N.H. REV. STAT. § 282-A:39(3)(D).

⁹⁰ *Id.* at (3)(E).

⁹¹ ALASKA DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, BENEFIT POLICY MANUAL: ABLE AND AVAILABLE, AA 155.1-1 (2020) available at https://labor.alaska.gov/unemployment/bpm/Able_Available.pdf.

⁹² *Id.* at AA 155.1-2.

Other states allow restrictions based on domestic responsibilities but specify that it must be due to a need for care of children under a certain age. Oregon, for instance, allows restrictions based on childcare needs for a child under 13 years old or for a child with special needs who is under 18 years old.⁹³ In cases involving a child with special needs, the child must “require a level of care over and above the norm” for a child of their age.⁹⁴ Oregon’s regulations do not penalize claimants for refusing care that they believe is unsuitable for their children.⁹⁵ In addition, claimants must be able to find work in their occupation during the times they remain available.⁹⁶

Similarly, courts in Massachusetts, New Jersey, North Carolina, and Pennsylvania have held that workers with childcare needs can be available despite refusing nighttime shifts.⁹⁷ Indiana has allowed parents to refuse day or night shifts if they have caregiving responsibilities.⁹⁸ Courts in Indiana have held that the good cause standard for refusing new work is more lenient than the good cause standard for quitting work: quitting due to lack of childcare is not good cause, but refusing new work for the same reason is good cause.⁹⁹ Maine has codified a similar but more restrictive allowance for childcare needs. Generally, claimants in Maine must be available at all times and for all shifts that are customary in their occupation.¹⁰⁰ However, claimants with parental obligations are not required to accept any shift that is mostly between 12 a.m. and 5 a.m.¹⁰¹

The remaining states that allow claimants to restrict their availability use broader language. Some states require only that the restrictions are reasonable or realistic.¹⁰² These states do not have any codified laws or regulations pertaining to when someone may permissibly restrict their availability, which may explain why the standard is fairly ambiguous. Other states direct commissioners to compare the reasonableness to the labor market. For example, the state may require confirmation that the claimant still has a reasonable prospect of work,¹⁰³ or that a “substantial field of employment” exists.¹⁰⁴ Arizona compares the claimant’s restrictions to the job requirements of their occupation, noting that the restrictions cannot “unduly lessen” the claimant’s ability to accept suitable work.¹⁰⁵ In addition, Arizona allows a limited safe harbor for personal activities: if the claimant takes part in activities that would prevent them from working on just one calendar day of the week, they are still available.¹⁰⁶ Some states have mixed and matched factors, mostly through judicial interpretation of vague availability requirement statutes. As an example, Rhode Island’s codified laws do not define what “available” means or whether one can place restrictions on

⁹³ OR. ADMIN. R. 471-030-0036(4).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ **Massachusetts:** *Conlon v. Dir. Div. of Emp. Sec.*, 382 Mass. 19, 413 N.E. 2d 727 (1980). **New Jersey:** *Tung-Sol Electric v. Bd. of Rev.*, 114 A.2d 285 (N.J. Super. Ct. App. Div. 1955). **North Carolina:** *In re Watson*, 161 S.E. 2d (N.C. 1968). **Pennsylvania:** *Hosp. Svc. Ass’n of Northeastern Penn. v. Unemp. Comp. Bd. of Rev.*, 476 A.2d 516 (Pa. Cmwlth. 1984).

⁹⁸ *Martin v. Rev. Bd. of Ind. Emp. Sec. Div.*, 421 N.E. 2d 653, 656, 659 (Ind. Ct. App. 1981) (allowing refusal of an 4pm to midnight shift); *Hacker v. Rev. Bd. of Ind. Emp. Sec. Div.*, 271 N.E. 2d 191 (Ind. Ct. App. 1971) (allowing refusal of a daytime shift).

⁹⁹ *Hacker*, 271 N.E. 2d 191.

¹⁰⁰ 12-72-9 ME. CODE R. § 2(A).

¹⁰¹ ME. STAT. tit. 26, § 1192(3).

¹⁰² **Kansas:** KAN. STAT. § 44-705; *Clark v. Bd. of Rev. of Emp. Sec. Div. of Labor Dep’t*, 359 P.2d 856 (Kan. 1961). **Maryland:** *Laurel Racing Ass’n Ltd. P’ship v. Babendreier*, 806 A.2d 357 (Md. App. 2002). **New York:** UNEMPLOYMENT INSURANCE APPEAL BOARD, BENCH MANUAL 141 (2020) available at <https://uiappeals.ny.gov/system/files/documents/2020/01/part-2-chapter-5.pdf>.

¹⁰³ ILL. ADMIN. CODE tit. 2865, § 110.

¹⁰⁴ CAL. CODE. REGS. tit. 22, § 1253(c)-1(a).

¹⁰⁵ ARIZ. ADMIN. CODE § R6-3-52155.

¹⁰⁶ *Id.* § R6-3-5205.

availability.¹⁰⁷ However, Rhode Island courts have interpreted availability to allow for restrictions, as long as claimants can show both that they have good cause for the restriction and would be able to find work in their job market during the times they have made themselves available.¹⁰⁸

Three states have codified laws and regulations that allow claimants to restrict their availability in the same manner that they did at their last job. These states may focus on hours or days worked or may just allow restrictions for part-time workers. Iowa compares the current restrictions to the claimant's previous restrictions.¹⁰⁹ Similarly, Florida looks to the claimant's "customary work week."¹¹⁰ Delaware also looks to the claimant's customary work week, but only if that worker is a part-time worker.¹¹¹

A few states treat shift workers differently than other types of workers. To determine whether a claimant who does shift work has permissibly restricted their availability, some states look to the number of shifts a claimant is unwilling to work, while others require full availability but allow exceptions for claimants with good cause. Texas courts have looked to the number of shifts that the claimant has eliminated in relation to the jobs in the area that remain available after the restriction.¹¹² Generally, they have held that claimants must be available for at least two-thirds of the shifts customary for their occupation.¹¹³ In contrast, South Dakota generally requires shift workers to be available for all shifts, but allows exceptions for claimants with "a compelling reason or commitment" to refuse shifts.¹¹⁴ Virginia treats shift workers who are students differently than other shift workers: it allows students to restrict their availability for at least one out of three shifts in their occupation but has denied this right to parents in the past.¹¹⁵

Sometimes a state will ignore the kind of work that a claimant does but require a baseline amount of availability. Nebraska, for instance, is unique in that it allows claimants to restrict their availability if they are available at least four days per week.¹¹⁶ ESD's proposed changes to Washington's availability regulations would fit within this category. The new rule would allow full-time workers to impose any restriction upon availability as long as they are available for at least 40 hours per week that coincide with the ordinary hours of operation in their occupation.¹¹⁷

¹⁰⁷ 28 R.I. GEN. LAWS § 28-44-12.

¹⁰⁸ See, e.g., *Huntley v. Dep't of Emp. Sec., R.I.*, 397 A.2d 902, 905-06 (R.I. 1979) (requiring good cause and an existence of work in the claimant's job market at the times they are available).

¹⁰⁹ IOWA ADMIN. CODE r. 871-24-22.

¹¹⁰ FLA. ADMIN CODE r. 73B-11.

¹¹¹ DEL. CODE tit. 19, § 3315(3).

¹¹² Compare Appeal No. 387-CA-70 (finding claimant available when he was available for two out of three shifts customary in occupation and they were the most heavily staffed shifts) with Appeal No. 1006-CA-77 (ruling claimant was unavailable when her restrictions eliminated 50–60 percent of work opportunities in her occupation).

¹¹³ *Id.*

¹¹⁴ S.D. ADMIN. R. 47:06:04:21.01.

¹¹⁵ Compare VA. CODE § 60.2-612 (allowing limited shift restrictions for higher-ed students) with *Cronin v. Prison Fellowship*, Comm'n Decision 24636-C, (Feb., 28, 1985) (denying benefits to claimant who restricted her availability to less than 30 hours per week due to childcare needs); *Holley v. Dan River Mills, Inc.*, Decision S-53-118; *aff'd* by Comm'n Decision 704-C (May 27, 1952); *aff'd* by Corporation Court for the City of Danville, *appeal denied* (denying benefits to claimant who would only work one out of three shifts in her occupation due to childcare).

¹¹⁶ 219 NEB. ADMIN. CODE § 4 (requiring availability for at least four days per week).

¹¹⁷ Wash. St. Reg. 20-03-10. See *supra* notes 54–54 and accompanying text.

In contrast, 25 states never allow restrictions upon availability.¹¹⁸ Many states specifically require that the claimant is available for all working hours or shifts which are customary for their occupation.¹¹⁹

B. Changed working conditions or increased job duties without increased pay

A great number of reasons for quitting relate to working conditions and job duties.¹²⁰ Many circumstances surrounding employment qualify as “working conditions” or relate to “job duties,” but the most common complaints in this realm relate to changes that would normally coincide with increased pay. Changes that would normally coincide with an increase in pay include increasing hours or shifts worked or increasing workload in skill or volume. This report focuses on other states’ general laws regarding changes to working conditions and job duties. It also highlights states that allow good cause in situations where the employer increased the claimant’s hours or increased the claimant’s workload to detrimental effect. Because Washington’s voluntary quit laws already allow quitting due to a deterioration of workplace safety or due to the claimant’s health and safety, this study does not address laws from other states addressing those reasons for quitting.¹²¹

To some degree, every other state considers it grounds for good cause when employers change working conditions or job duties without a commensurate increase in pay. Most states allow this through interpretation rather than expressly allowing it in their codified laws. This is partially due to the fact that many other states’ good cause statutes include broad language, requiring only “good cause” or “good cause attributable to the employer.”¹²² The broader language in other states, which frequently gives preference to quits related to an action of the employer, leads to broader allowances for quitting due to changes in working conditions and job duties.

(i) Changes to employment as good cause

Only one state, Maine, has codified a rule similar to the language proposed by SB 5473, stating that quitting on account of changed working conditions or job duties is good cause when there

¹¹⁸ **Alabama:** ALA. ADMIN. CODE § 480-4-3-.15. **Arkansas:** *Wacaster v. Daniels*, 603 S.W. 2d 907, 911 (Ark. Ct. App. 1980). **Colorado:** COLO. ADMIN. CODE 1101-2:8.3.9. **Connecticut:** *Leclerc v. Admin’r, Unemp. Comp. Act*, 78 A.2d 550 (Conn. 1951). **Georgia:** GA. CODE § 34-8-24. **Hawaii:** HAW. REV. STAT. § 383-29. **Idaho:** IDAHO ADMIN. CODE r. 09.01.30.175. **Kentucky:** 787 KY. ADMIN. REGS. 2:030. **Louisiana:** LA. STAT. § 23:1600; *Benward v. Grace*, 370 So. 2d 660, 662 (La. Ct. App. 1979). **Michigan:** *Ford Motor Co. v. Appeal Bd. of Mich. Unemp. Comp. Comm’n*, 25 N.W. 2d 586 (Mich. 1947). **Minnesota:** MINN. STAT. § 268.085. **Mississippi:** *Miss. Emp. Sec. Comm’n v. Blasingame*, 116 So. 2d 213 (Miss. 1959). **Missouri:** *Lauderdale v. Div. of Emp. Sec.*, 605 S.W. 2d 174 (Mo. Ct. App. 1980); see also *Golden v. Indus. Comm’n Div. of Emp. Sec.*, 524 S.W. 2d 34 (Mo. Ct. App. 1975). **Nevada:** NEV. DEP’T OF EMP., APPEALS HANDBOOK 23 (2018). **New Mexico:** *Moya v. Emp. Sec. Comm’n*, 450 P.2d 925 (N.M. 1969). **North Dakota:** N.D. CENT. CODE § 52-06-01. **Ohio:** OHIO REV. CODE § 4141.29; OHIO DEP’T OF JOB AND FAMILY SVCS., WORKER’S GUIDE TO UNEMPLOYMENT 12 (2005) available at https://unemployment.ohio.gov/PDF/Workers_Guide_to_UC.pdf. **Oklahoma:** OKLA. STAT. tit. 40 § 2-205.1. **South Carolina:** *Judson Mills v. S.C. Unemp. Comp. Comm’n*, 28 S.E. 2d 535 (S.C. 1944). **Tennessee:** *Aladdin Indus. Inc. v. Comm’r*, 407 S.W. 2d 161 (Tenn. 1966). **Utah:** UTAH ADMIN CODE r. 994-403-112c. **Washington:** *Sennott v. Emp. Sec. Dep’t*, 9 Wash. App. 2d 1061 (2019) (unpublished). **West Virginia:** WORKFORCE W. VA., CLAIMANT HANDBOOK 16 (2016). **Wisconsin:** WIS. ADMIN. CODE. DWD 128.01(4)(2) (requiring availability for suitable work during the “standard hours in which work is performed in the” claimant’s occupation). *But cf.* WIS. STAT. § 108.04(7)(cm) (preserving parents’ availability if they quit their job due to an employer-initiated shift change that conflicts with their childcare responsibilities). **Wyoming:** WYO. STAT. § 27-3-306.

¹¹⁹ **Colorado:** COLO. ADMIN. CODE 1101-2:8.3.9. **Hawaii:** HAW. REV. STAT. § 383-29). **Louisiana:** LA. STAT. § 23:1600; *Benward v. Grace*, 370 So. 2d 660, 662 (La. Ct. App. 1979). **Michigan:** *Ford Motor Co. v. Appeal Bd. of Mich. Unemp. Comp. Comm’n*, 25 N.W. 2d 586 (Mich. 1947). **Minnesota:** MINN. STAT. § 268.085. **Mississippi:** *Miss. Emp. Sec. Comm’n v. Blasingame*, 116 So. 2d 213 (Miss. 1959). **Missouri:** *Lauderdale v. Div. of Emp. Sec.*, 605 S.W. 2d 174 (Mo. Ct. App. 1980); see also *Golden v. Indus. Comm’n Div. of Emp. Sec.*, 524 S.W. 2d 34 (Mo. Ct. App. 1975). **Nevada:** NEV. DEP’T OF EMP., APPEALS HANDBOOK 23 (2018). **Utah:** UTAH ADMIN CODE r. 994-403-112c. **Wisconsin:** WIS. ADMIN. CODE. DWD 128.01(4)(2).

¹²⁰ See WAC 192-150-145(4)(a) for a list of working conditions.

¹²¹ See RCW 50.20.050(2)(b)(ii), (viii).

¹²² South Dakota is the only other state that enumerates specific circumstances amounting to good cause as narrowly as Washington. Colorado also enumerates reasons for good cause but not as narrowly. See supra note 60 and accompanying text.

was not a commensurate increase in pay.¹²³ But Maine’s regulations are broader than the language proposed by SB 5473 because any detrimental change, regardless of whether pay was increased, could also be grounds for good cause. For instance, if the claimant’s employer changes their work schedule, that could be good cause in Maine.¹²⁴ Like Maine, many other states allow quits due to unfavorable changes to working conditions and job duties without attaching a specific additional condition, like a lack of increased pay.

Six states have cited a “substantial change” in working conditions, in and of itself, to be good cause. Usually, these states just require that the change be adverse to the claimant in some way. Minnesota statutory law requires that the employer was the source of the change, that the change was adverse, and that the situation would “compel the average, reasonable worker to quit.”¹²⁵ Louisiana, Nebraska, New York, North Dakota, West Virginia have all cited a “substantial change” in working conditions made by the employer as providing grounds for good cause in unemployment appeals.¹²⁶

Other states permit the claimant to quit with good cause when there has been a change in the original terms of the employment agreement or contract. Idaho’s statutory law allows a breach of an employment contract, changed working conditions or job tasks to be considered good cause to quit under the law.¹²⁷ South Dakota’s voluntary quit statute allows a “breached or substantially altered” employment contract to be good cause.¹²⁸ Regulations in Alaska and Georgia allow claimants to quit due to breached hiring agreements.¹²⁹ Similarly, Iowa’s regulations allow a substantial “change in contract for hire” to provide grounds for good cause.¹³⁰ The Iowa regulations list changes in hours, pay, employment location, and a “drastic modification in type of work” as being typical changes to a contract.¹³¹ Past unemployment appeals in Iowa show that a written agreement is not required.¹³² Courts in Kentucky and Ohio have also held that breaches or substantial changes to an employment agreement are good cause.¹³³ In one illustrative Kentucky case, a resort caretaker was suddenly tasked with the duties of the night watchperson, in addition to his regular duties. This change increased his hours from 40 per week to being on call at all hours of the day, six days per week.¹³⁴ Despite his complaints, his employer did not increase his salary, forced him to live in substandard housing at the resort, and tasked him with substantially more duties than those for which he was hired to do.¹³⁵ Even though the caretaker assumed these duties for ten months, the court held that he had good cause to quit when his employer tried to force this change on him permanently.¹³⁶

¹²³ 12-172-17 ME. CODE R. § 4.

¹²⁴ *Id.* § 5.

¹²⁵ MINN. STAT. § 268.095.3(a).

¹²⁶ **Louisiana:** *Gaudin Equipment & Supply Co. v. Admin’r, La. Dep’t of Labor*, 534 So.2d 493, 498 (La. Ct. App. 1988). **Nebraska:** *In re Konicek*, 04 Neb. App. Trib. 0584 (2004). **New York:** Appeal Board No. 544774. **North Dakota:** *Newland v. Job Serv. N.D.*, 460 N.W. 2d 118, 124 (N.D. 1990). **West Virginia:** *Murray v. Rutledge*, 327 S.E. 2d 403 (W. Va. 1985).

¹²⁷ IDAHO CODE § 72-1366; IDAHO ADMIN. CODE r. 09.01.30.450. In fact, these are the only reasons that Idaho allows for claimants to quit and have good cause.

¹²⁸ S.D. CODIFIED LAWS § 61-6-9.1.

¹²⁹ **Alaska:** ALASKA ADMIN. CODE tit. 8, § 85.095(c). **Georgia:** GA. COMP. R. & REGS. 300-2-9-.05.

¹³⁰ IOWA ADMIN. CODE r. 871-24-26(1).

¹³¹ *Id.*

¹³² See, e.g., *Certain-Teed Corp. v. Emp. Appeal Bd.*, 2000 WL 504594 (not reported).

¹³³ **Kentucky:** *Nichols v. Ky. Unemp. Ins. Comm’n*, 677 S.W. 2d 317 (Ky. Ct. App. 1984). **Ohio:** *Marietta Coal Co. v. Kirkbride*, 26 N.E. 3d 852, 858 (Ohio Ct. App. 2014).

¹³⁴ *Nichols v. Ky. Unemp. Ins. Comm’n*, 677 S.W. 2d 317, 318 (Ky. Ct. App. 1984).

¹³⁵ *Id.* at 321.

¹³⁶ *Id.*

Some states have more restrictions for when a breached employment agreement can amount to good cause. For instance, Kansas’s statutory law allows for good cause when there has been a substantial change in the working agreement and the claimant exhausted “all remedies provided in such agreement for the settlement of disputes before terminating.”¹³⁷ Kansas’s law also notes that demotions based on performance do not qualify as grounds for good cause.¹³⁸ Nevada similarly restricts good cause in this area. Its unemployment appeals handbook advises that a breach of an employment contract is good cause, but that changes in working conditions only qualify as good cause if the work has become unsuitable.¹³⁹ Some states are more specific on what the breach concerns, for example, Connecticut allows quitting for a material breach when it relates to wages.¹⁴⁰

Arizona also limits when a claimant can quit due to working conditions or job tasks. Its regulations specifically allow for quitting on account of changed working conditions, noting that even if the employer’s changes create a conflict in the claimant’s personal affairs that spurs them to leave, the separation will still be attributable to the employer.¹⁴¹ Objections based on working certain times or days of the week need to be based on some “compelling personal reason.”¹⁴² Irregular hours, however, require less of a showing: good cause will be found if the claimant can show that their irregular schedule “unreasonably” hinders their ability to have a normal private life.¹⁴³ While Arizona’s laws are relatively favorable to employees regarding time, they allow employers greater leeway in assigning additional job duties: altered job duties never amount to good cause in Arizona unless the change rendered the work unsuitable.¹⁴⁴

(ii) Reduced rate of pay as good cause

Many states have explicitly addressed narrower circumstances relevant to substantial changes in working conditions or increased job duties. Some allow claimants to have good cause when their rate of pay substantially decreases, which is another way of saying that claimants can quit on account of substantial changes in working conditions without a commensurate increase in pay. A change in rate of pay could occur because an employer unilaterally imposed additional hours or overtime work without increasing the claimant’s pay. Washington does not allow a decreased rate of pay to be good cause for quitting, despite allowing quits for decreased hours or usual take-home pay.¹⁴⁵

Regulations in Connecticut and Hawaii allow claimants to have good cause when they quit on account of a reduced rate of pay.¹⁴⁶ Colorado also allows quitting on account of reduced pay rate, but only in situations where the rate change was unreasonable.¹⁴⁷ Oregon imposes slightly more requirements. First, the reduction of pay must be at least 10 percent below “the median rate of pay for similar work in the individual’s normal labor market.”¹⁴⁸ Second, the reduction cannot be

¹³⁷ KAN. STAT. § 44-706(a)(10).

¹³⁸ *Id.*

¹³⁹ STATE OF NEVADA DEP’T OF EMP., TRAINING & REHAB., EMP. SEC. DIV., NEVADA UNEMPLOYMENT COMPENSATION PROGRAM APPEALS HANDBOOK 20–21, available at http://ui.nv.gov/Handbooks/Appeals_Handbook.pdf.

¹⁴⁰ CONN AGENCIES REGS. § 31-236-20(1)(A).

¹⁴¹ ARIZ. ADMIN. CODE § R6-3-5005.

¹⁴² *Id.* § R6-3-50450.

¹⁴³ *Id.*

¹⁴⁴ *Id.* § R6-3-50515.

¹⁴⁵ See *supra* notes 37–37 and accompanying text; RCW 50.20.050(2)(b)(v), (vi).

¹⁴⁶ **Connecticut:** CONN AGENCIES REGS. § 31-236-20(1)(D). **Hawaii:** HAW. CODE R. § 12-5-47(c)(2).

¹⁴⁷ COLO. REV. STAT. § 8-73-108(4)(e).

¹⁴⁸ OR. ADMIN. R. 471-030-0038(5)(d).

the result of a transfer, demotion, or reassignment.¹⁴⁹ Third, the change does not qualify if it concerns guaranteed minimum earnings or commission rates.¹⁵⁰ Finally, the change cannot be to fringe benefits.¹⁵¹

California's regulations on quitting on account of wages are more restrictive than the laws of other states mentioned above. Claimants may quit due to "dissatisfaction" with wages, but California regulations do not take rate of pay into account.¹⁵² "Dissatisfaction" can only amount to good cause in three narrow circumstances: the wages are less than state or federal minimum wage, the employer fails to pay wages on time, or the claimant is demoted or transferred and their pay is reduced.¹⁵³ While California's regulations are restrictive upon those who quit due to wages, they more broadly allow claimants to quit on account of time considerations. Time-related reasons considered to be good cause in California include objections to overtime or the days and hours for which the claimant was scheduled.¹⁵⁴ A mere objection or dissatisfaction with the changes is not enough: the claimant must have had a compelling reason because of the change, informed the employer that they will quit, and allowed the employer "a reasonable opportunity" to fix the problem.¹⁵⁵

(iii) Detrimental changes to working conditions or job duties as good cause

Some states have specifically considered detrimental changes to job duties as being good cause for quitting. Arizona regulations consider it good cause to quit when an employer assigns more duties that would normally result in an increase of pay.¹⁵⁶ The duties must have been increased for "longer than a temporary short period of time" and the claimant must have tried to fix the issue with their employer before quitting.¹⁵⁷ Hawaii's regulations allow changes in the terms of employment to amount to good cause, specifically including situations where the employer changes the claimant's duties or job position.¹⁵⁸

California regulations allow voluntary quitting for many conditions relating to work including "duties or requirements for work, employer rules for the work, the method, manner, quality or quantity of the work, relations with other employees, and work transfer situations."¹⁵⁹ Disliking these conditions or being minorly inconvenienced is insufficient to amount to good cause.¹⁶⁰ The claimant must have tried to remedy the situation, unless the employer would not have been able to fix the problem or they have refused other employee's requests to fix the same problem.¹⁶¹

Connecticut's code of regulations allows claimants to quit on account of eleven specified working conditions.¹⁶² The permissible reasons include quitting on account of a significantly detrimental change in working conditions within the employment agreement, denials by the employer of equal

¹⁴⁹ *Id.* at (5)(d)(A).

¹⁵⁰ *Id.* at (5)(d)(B).

¹⁵¹ *Id.* at (5)(d)(C).

¹⁵² CAL. CODE. REGS. tit. 22, § 1256-22.

¹⁵³ *Id.* § 1256-22.

¹⁵⁴ *Id.* § 1256-20.

¹⁵⁵ *Id.* § 1256-20.

¹⁵⁶ ARIZ. ADMIN. CODE § R6-3-50500(D).

¹⁵⁷ *Id.*

¹⁵⁸ HAW. CODE R. § 12-5-47(c)(2).

¹⁵⁹ CAL. CODE. REGS. tit. 22, § 1256-23(a).

¹⁶⁰ *Id.* § 1256-23(b).

¹⁶¹ *Id.*

¹⁶² CONN. AGENCIES REGS. § 31-236-22.

opportunity, discriminatory behavior, verbal or physical abuse, threat or intimidation in response to legal union behavior, and failing to fulfill a definite promise of promotion.¹⁶³

Colorado does not address changes in job duties specifically in its codified laws or regulations but has addressed this issue in previous unemployment appeals. In Colorado, a substantial change in job duties is sufficient grounds for quitting on its own.¹⁶⁴ In one appeal, an employer eliminated the claimant's supervisory duties and changed other tasks that the claimant was required to do.¹⁶⁵ Despite the fact that the claimant's pay had stayed the same, the court held that he was eligible for benefits because there had been a "substantial change" in working conditions. As an additional condition, the court noted that in cases like this, employees must not "acquiesce" to the new working conditions.¹⁶⁶ However, acquiescence does not require that the employee quit right away: in this case the claimant continued working for six months but had filed a grievance.¹⁶⁷

Courts in Florida and Ohio have allowed claimants to quit on account of detrimental changes to working conditions.¹⁶⁸

In summary, most other states allow benefits for claimants who show they have good cause for quitting because of a substantial change to their working conditions. But not every state views changes to working conditions in the same way. Some states allow for any detrimental change to be sufficient. Other states specify the circumstances that they deem to be good cause.

C. Relocating to be nearer to a minor child

A parent's desire for geographical proximity to a minor child may compel them to relocate outside of their existing labor market. As written in SB 5473, this reason for quitting could apply to multiple circumstances. Often, this happens when one parent has primary custody of a minor child and chooses to move to a different job market, which could compel the other parent to follow. It's also common for a couple that is not married or domestically partnered to co-parent a child. These families face the same challenges when one parent gets transferred to a different job market. Lastly, this could also include parents who want to relocate to be nearer to their children who attend a school that is out of the parent's current job market. No other state has codified a law that would allow all three of these circumstances. Only one state has a codified regulation similar to this rationale for voluntary quitting as suggested by SB 5473, and at least one other state allows some form of this allowance through interpretation.

In California, quitting to "preserve family unity" is codified as being good cause.¹⁶⁹ This regulation seems to be primarily intended for use as justification for spouses to follow each other to new locations.¹⁷⁰ However, "family unity" is interpreted to include the relationship between a parent and child, irrespective of the marital status of the parents.¹⁷¹ California courts have previously allowed one member of an unmarried couple to utilize this reason for good cause, partially due to the fact that they shared one

¹⁶³ *Id.* § 31-236-22(a)(1)(A), (E), (F), (G), (H).

¹⁶⁴ See, e.g., *Nimmo v. Town of Monument*, 736 P.2d 435 (Colo. Ct. App. 1987).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 436.

¹⁶⁷ *Id.* at 437. Cf. Washington's law on refusing "new work" *supra* note 38 and accompanying text.

¹⁶⁸ **Florida:** *Tourte v. Oriole of Naples, Inc.*, 696 So. 2d 1283 (Fla. Dist. Ct. App. 1997). **Ohio:** *Stimson v. Team America 1*, 2004 WL 744827 (Ohio Ct. App. 2004) (unreported).

¹⁶⁹ CAL. CODE. REGS. tit. 22, § 1256-10(c)(6).

¹⁷⁰ See *id.*

¹⁷¹ See *MacGregor v. Unemp. Ins. Appeal Bd.*, 689 P.2d 453, 458, 459 (Cal. 1984) ("[T]he legal relationship between a child and [their] parents is not dependent on the existence of marriage between parents . . . [W]e reaffirm the principle that the lack of a legally recognized marriage does not prevent a claimant from demonstrating that compelling familial obligations provided good cause for leaving employment.").

household for two years before having a child.¹⁷² This interpretation allows co-parents who are in a relationship to follow each other to new job markets, but it is unclear whether this same principle could apply to co-parents who do not cohabitate. Dicta from the same case leans in favor of California's commissioner adopting such an interpretation: "[California's] policy in favor of maintaining secure and stable relationships between parents and children is equally as strong as its interest in preserving the institution of marriage."¹⁷³ If California were to adopt such an interpretation, the claimant would likely be required to demonstrate how detrimental the effect would be if they were to not follow their child to the new location. Comments on the regulation note that "the danger of disintegration of the family unit must be so substantial as to compel the claimant to leave" their job.¹⁷⁴

New York has allowed co-parents to follow each other through interpretation of its laws.¹⁷⁵ Although moving to be nearer to a minor child is not explicitly considered to be good cause in its laws or regulations, following one's "spouse" to a new location is, and its unemployment insurance appeal board has interpreted "spouse" to include co-parents in non-marital relationships.¹⁷⁶ In one case, a claimant was found to have good cause to move away from New York so that he could help his girlfriend, who lived in California, take care of their newborn son.¹⁷⁷

Three states seem highly likely to approve such a reason for quitting if there are also compelling circumstances for the child and parent being geographically close to each other. For instance, Kansas's commissioner can find good cause when the claimant is suffering from a "personal emergency."¹⁷⁸ In one case from Kansas, a claimant was found to have quit with good cause when he arrived home from work to find his wife in the driveway with a moving van; she gave him an ultimatum: move to another city with her and their child or stay in their current city without them.¹⁷⁹ In that case, the court found that the threat of separation was so imminent that it rose to the level of a personal emergency.¹⁸⁰ Oregon would also likely interpret its laws to include this reason for quitting due to its allowance of "compelling family reasons" being sufficient to find that there was good cause.¹⁸¹ Pennsylvania also could allow this, but the claimant would likely need to show that there was a compelling reason for the parent and child to not be separated other than maintaining the family unit.¹⁸² A showing that an emotionally challenged child needs emotional support from the parent has been sufficient in the past.¹⁸³

¹⁷² *Id.*

¹⁷³ *Id.* at 459.

¹⁷⁴ CAL. CODE. REGS. tit. 22, § 1256-10 ex. 2.

¹⁷⁵ New York Unemp. Ins. Appeal Bd. No. 560340 (2012) (holding that claimant had good cause to move from New York to California "to parent his newborn son."); New York Unemp. Ins. Appeal Bd. No. 559514 (2011) ("[W]e presume . . . That a claimant who accompanies a person with whom the claimant has a child in common has a compelling family reason for doing so, provided that the co-parent's relocation was supported by good cause.").

¹⁷⁶ NEW YORK UI APPEALS BENCH MANUAL, ch. 1 at 7, available at <https://uiappeals.ny.gov/system/files/documents/2020/01/part-2-chapter-1.pdf>.

¹⁷⁷ New York Unemp. Ins. Appeal Bd. No. 560340 (2012).

¹⁷⁸ KAN. STAT. § 44-706.

¹⁷⁹ *Churchill Truck Lines, Inc. v. Dep't of Hum. Res., Emp. Sec. Bd. of Rev.*, 837 P.2d 1322 (Kan. Ct. App. 1992).

¹⁸⁰ *Id.*

¹⁸¹ See OR. ADMIN. R. 471-030-0038(5)(g).

¹⁸² See 43 PA. STAT. AND CONS. STAT. § 802(b) (Good cause must be "necessitous and compelling [in] nature").

¹⁸³ See *Beachem v. Unemp. Comp. Bd. of Rev.*, 760 A.2d 68 (Pa. Cmwlth. Ct. 2000).

Fourteen other states could potentially interpret their good cause laws to include this scenario as a non-disqualifying reason for quitting.¹⁸⁴ Most of these states seem more likely to accept this reason for voluntarily quitting as non-disqualifying because their statutes allow claimants to quit to follow their spouses to other locations. However, Washington state allows claimants to have good cause to quit to follow a spouse but does not interpret this reason for quitting to be nearer to a minor child.¹⁸⁵ A few states are also likely to accept this as a permissible reason because their statutes include leaving for compelling personal reasons as amounting to good cause.¹⁸⁶

¹⁸⁴ Those states are Arkansas, Colorado, Delaware, Hawaii, Illinois, Indiana, Iowa, Maine, Massachusetts, Nebraska, Nevada, Oklahoma, Rhode Island, and Utah.

¹⁸⁵ See ARK. CODE § 11-10-513(b)(4); COLO. REV. STAT. § 8-73-108(4)(u); DEL. CODE tit. 19, § 3314(1); HAW. REV. STAT. § 383-7.6(a)(3); 820 ILL. COMP. STAT. 405/601(B)(7); IND. CODE § 22-4-15-1(c)(7); IOWA CODE § 96.5(1)(b); ME. STAT. tit. 26, § 1193(1)(A)(2); MINN. STAT. § 268.095(1)(10); NEB. REV. STAT. § 48-628.13(3); NEV. REV. STAT. § 612.380(1)(a) (requiring only “good cause”); NEVADA UNEMPLOYMENT COMPENSATION PROGRAM, NEVADA APPEALS HANDBOOK 17–18 (2018) (allowing a claimant to have good cause for following a spouse; it may also be possible to follow a companion if there are “minor children involved in the relationship.”); OKLA. STAT. tit. 40 § 2-219(4)(c); 28 R.I. GEN. LAWS § 28-44-17(a)(2).

¹⁸⁶ See ARK. CODE § 11-10-513(b)(1) (allowing good cause when “a personal emergency of such nature and compelling urgency” occurs and “it would be contrary to good conscience to impose a disqualification”); MASS. GEN. LAWS ch., 151A, § 25(e) (allowing quits based on a reason that is so “urgent, compelling and necessitous [in] nature as to make [their] separation involuntary”); NEB. REV. STAT. § 48-628.13(11) (finding good cause in circumstances where “[e]quity and good conscience demand” it); UTAH CODE § 35A-4-405(1)(b) (“A claimant may not be denied eligibility for benefits if the claimant leaves work under circumstances where it would be contrary to equity and good conscience to impose a disqualification”); UTAH ADMIN CODE r. 994-405-107.

Fiscal impacts from expanding voluntary quit eligibility

Methodology and scope of analysis

To determine the impact to employer tax rates and Washington's Trust Fund, ESD first estimated how the proposed changes would impact the yearly number of voluntary quits (VQs). Since ESD was charged with estimating the impacts of "proposed" changes in law, no data dealing with the specific topics of interest currently exists in Washington state.

ESD conducted an analysis of recent legal separation decisions to determine how often the scenarios outlined in this report were addressed in voluntary quit litigation. ESD looked to other, similar states to estimate the increase in voluntary quits in Washington.

ESD also obtained historical data on voluntary quits in Washington to help determine the impact of the proposed changes. We extracted data from the Unemployment Tax and Benefits (UTAB) system to capture the number of voluntary quits per year for all the categories under current law.

ESD staff interpreted the voluntary quit data and used it to project how the proposed changes in law would impact the historical data that had been provided. These research estimates were used to determine how the increase in voluntary quits for each category would impact the overall balance in the Trust Fund and how it could impact individual employer's experience or social tax rate if they were charged. Even though estimates were arrived at by surveying adjudicators and supervisors who deal with thousands of claims every year, some variance in the total number for each category is possible.

Trust Fund impact

Employers' unemployment insurance taxes go into a Trust Fund, from which ESD pays benefits to qualified claimants. ESD applies benefit charges to an employer when their former employees receive benefit payments. For taxable employers, the higher the benefits charged against an account, the higher the tax rate. Taxes are based on charges to an employer's account for the past four years divided by reported wages. This tax is called the "employer experience rating." Under some circumstances, an employer may receive relief of benefit charges. This means ESD removes the charges from the employer's account and doesn't include them when calculating the employer's tax rate. If the employee's separation is due to a voluntary quit and the employer wasn't the cause of the quit, the employer may receive relief of benefit charges.

When ESD doesn't apply benefit charges to an employer, the cost is socialized. Socialized costs are spread out to all taxable employers in the state. Taxable employers pay a social tax to cover benefit payments that ESD doesn't charge to an individual employer. To calculate the social tax, ESD subtracts the total taxes paid by all employers during the last four quarters from the total unemployment benefits paid to all claimants during the same time. This amount is then divided by total taxable payrolls and expressed as a percent.¹⁸⁷

Whenever the law changes to allow benefits to more people, there may be impacts to the Trust Fund balance and employers tax rates. The following describes how each of the proposed changes will impact the Trust Fund balance and an employer's individual tax rate.

ESD's legal analysis included examining initial orders, initial orders on remand and Commissioner Review Office decisions related to separation decisions to determine how often the issues of interest to this report were discussed. The review attempted to match the key words related to: (1) care for a child or vulnerable adult became inaccessible and the claimant's efforts to retain employment were unsuccessful; (2) the employer significantly changed working conditions or substantially increased job duties without increasing pay; and (3) the claimant relocated out of the existing labor market to be in closer proximity to a minor child.

¹⁸⁷ The maximum flat social tax is 1.22 percent. RCW 50.29.025(2)(b)(i)(B)(I). An employer's individualized social tax rate can be more or less than this flat social tax percentage, depending on the individual employer's assigned rate class. RCW 50.29.025(2)(b)(ii)(B). However, an employer's combined experience rating and graduated social tax cannot exceed 6.0 percent. *Id.*

ESD staff identified 1,204 legal documents out of roughly 12,000 docket numbers that were voluntary quit appeals (2018 to 2019). We found limited pertinent information after running a Boolean keyword search of the 1,204 documents.

One of our stakeholders, the Unemployment Law Project (ULP), provided us the opportunity to search their database of initial orders from the Office of Administrative Hearings which also resulted limited pertinent information.

ESD staff then expanded the search using terminology which constitute good cause for voluntary quits under current law that are related to those contemplated in this report. We made an effort to have documents in searchable PDF format saved to a network share where we could use a virtual machine (mainly in low network use times) to search for various phrases we thought might help find cases that might include these specific issues. This effort was unsuccessful in providing us with any usable information.

The next level of inquiry ESD staff undertook was to determine how policy changes contemplated in this report impact the number of VQs in other states. ESD staff reached out to states that have VQ laws that are similar to our own, contacting the following states and receiving responses as designated by an asterisk: Illinois*, Maine*, Minnesota*, Iowa*, Oregon*, California, Delaware, Indiana, Massachusetts, Nebraska, Nevada and New Hampshire.

The information received from these states was of limited use because none of these states' laws or regulations categorize VQs in the same way as in this study. Since the wording in these states is not the same as this inquiry, they do not collect claims data based upon the three categories outlined in the report. Some do, as a result of their appeals processed on a case-by-case basis, allow some of these conditions to be considered good cause for a VQ. However, these scenarios are typically considered under a general definition for voluntarily leaving and are not specifically provided for in statute, hence the lack of data.

The analysis of key words in legal documents and information from other states were of limited utility. The next step ESD staff took was to examine historical claims data from Washington state. This was done by extracting data from the Unemployment Tax and Benefits (UTAB) system to capture the number of VQs per year in all categories under current law.

ESD staff interpreted the VQ data and used it to project how the proposed changes in law would impact the historical data that had been provided. Staff involved in this analysis included claim center managers, lead business analysts, and key frontline staff members and adjudicators who deal with thousands of claims every year, to assist in projecting the impact to the number of claims.

As to the proposal to allow good cause to quit when care for a *child or vulnerable adult became inaccessible and the claimant's efforts to retain employment were unsuccessful*, ESD staff considered existing "good cause" reasons to quit work that relate directly to health care or family issues, including: the death, disability, or illness of oneself or an immediate family member, relocation for a spouse or domestic partner's employment, and protection of self or an immediate family member from domestic violence or stalking.

After consultation with lead analysts, claims center supervisors, managers and frontline intake staff members and adjudicators who adjudicate thousands of claims every year, ESD projects that approximately 30 percent of all voluntary quits under the "general category" are related to health or family issues. The agency processes approximately 6,500 of these claims every year.

From this base of 6,500, ESD projects that the proposed expansion of the basis for VQs for *care of a child or vulnerable adult* will increase by 10 percent (650) of such claims, resulting in the number of health and family-related claims increasing to approximately 7,150 per year. ESD estimates a 10 percent increase based on the fact that the proposed change includes a variety of requirements that the claimant had to meet to be eligible for benefits. These include: proving that the separation was necessary, making reasonable efforts to preserve employment by requesting a leave of absence or a different working schedule, promptly notifying the employer of the reason for their absence, and having promptly requested reemployment when again able to assume employment.

As to the provision that *the employer significantly changed working conditions or substantially increased job duties without increasing pay*, we are projecting that this proposal will increase the number of VQ adjudications by five percent over current levels, resulting in 1,434 additional adjudications. In coming to this conclusion, ESD reviewed the recent history of situations where employers reduced compensation or hours by 25 percent or more. From a base of 28,676 total VQ claims per year, ESD projects the proposed expansion on the basis for VQs when the employer significantly changed working conditions or substantially increased job duties without increasing pay, will increase total claims by five percent, resulting in an increase of approximately 1,434 per year.

As to a VQ based on *the claimant moving to a different job market to be nearer to their minor child*, ESD projects that approximately 200 additional voluntary quits will result from the implementation of this proposal. Several of the acceptable reasons for VQs found in current law result in less than 200 claims per year; ESD believes this proposal fits into that category.

Once consensus was achieved on the projected increase in VQs for each category, ESD staff then sought to determine the impact on the overall balance in the Trust Fund and how it could impact individual employer experience rating if the employer is charge and social tax rate if employers are granted relief of benefit charges.

In determining impacts to the Trust Fund and to an individual employer's tax rate based on the proposed additions to the VQ law, ESD relied on the research conducted within this study to estimate the extent of increased VQs under each proposal. ESD determined how the proposals would impact the Trust Fund individually and if combined. In determining the impact on an employer's contribution account, the taxes will change based upon experience rating history, number of employees and current tax rate class. In this analysis, ESD assumes an average tax rate class, with a duration of charged benefits and level (amount) of benefits, with the employer charged one additional VQ decision. ESD assumed that each benefit payout will be in the same amount, therefore, the benefit payouts and duration of benefits will impact the contribution accounts in the same way for each proposal. ESD also included the increase in socialized cost for each proposal and for all proposals combined.

For this analysis, in estimating impacts on contribution rates in 2020, ESD prepared three scenarios. In the first scenario, we assume the employer has the average tax rate (rate class 8), five employees making \$50,000 annually and one additional VQ decision.¹⁸⁸ The weekly benefit amount for the claimant would be \$417 a week with a duration of 16.1 weeks. Since ESD assumes equal benefit payouts for each proposal, we estimate the benefit payouts for each proposal at \$6,714 per individual. Therefore, Trust Fund impacts include:

- For the proposal relating to *care for a child or vulnerable adult*, ESD projects an increase in VQs of 650 which will result in \$4,363,905 of total benefit charges.
- For the proposal related to a *change in working conditions or job duties without a commensurate pay increase*, ESD projects additional VQs of 1,434 will result in an increase in total benefit charges of \$9,672,446.
- Regarding the proposal related to *leaving a job to be nearer a minor child*, the additional 200 VQs will increase total benefit charges by \$1,342,740.

The total estimated aggregate impact to the Trust Fund is \$15,334,091.

¹⁸⁸ ESD chose to use five employees for this scenario because it is close to the median amount of employees per employer in 2019, based upon quarterly census of employment and wage records. In 2019, the average business in rate class 8 had a median of 8 employees, while the average amount was 22 employees. ESD chose to use \$50,000 as the taxable wage base for simplicity in describing the impacts to employers' tax rates. While the full taxable wage base is \$56,500, the impacts using different taxable wage base assumptions will show similar impacts overall between \$56,500 and 50,000. Finally, in some cases a new voluntary quit could be 100 percent charged to the separating employer, rather than having the benefit charges spread proportionately across all base year employers. For these purposes, we are assuming that the new benefit charges caused by these voluntary quits would either be charged proportionately to employers or completely non-charged.

We then calculated an individual employer's taxes if ESD does or does not apply benefit charges. As in the Trust Fund analysis, in estimating impacts on contribution rates in 2020, ESD assumes the employer has:

- The average tax rate (rate class 8),
- Five employees making \$50,000 annually (\$250,000 taxable wage base)
- One more VQ decision to allow benefits.

If the VQ is not charged, the employer in our example will remain in rate class 8 with total benefit charges of \$8,000, an experience tax of 0.76 percent and a social tax 0.17 percent.¹⁸⁹ When the calculation includes the employer's 0.03 percent administrative tax, the overall tax rate is 0.96 percent resulting in a tax liability for 2020 of \$2,400.

If the VQ is charged, the employer's benefit charges will increase to \$14,714, an increase of \$6,714. This will move the employer from rate class 8 to rate class 13, resulting in an experience tax increase from 0.76 percent to 1.41 percent and a social tax increase from 0.17 percent to 0.22 percent. The administrative tax would not change, resulting in an overall tax rate of 1.66 percent. The total tax liability would be \$4,150. Therefore, in our example, the employer would pay an increase in taxes for 2020 in the amount of \$1,750 if benefit charge relief was not available.¹⁹⁰

In the second scenario, ESD assumes the employer has:

- The average tax rate (rate class 8),
- 20 employees making \$50,000 each annually (\$1,000,000 taxable wage base)
- Two more VQ decision to allow benefits.

If the voluntary quits are not charged, the employer in our example will remain in rate class 8 with total benefit charges of \$30,000, an experience tax of .76 percent and a social tax of .17 percent.¹⁹¹ When the employer's .03 percent administrative tax is included, the overall tax rate is .96 percent resulting in a tax liability of \$9,600. (The impact on the Trust Fund is too small to impact the social tax).

If the voluntary quits are charged, the employer's benefit charges will increase by \$13,427.40 in 2020 resulting in total benefit charges of \$43,427.40. This will move the employer up to rate class 10, resulting in an experience tax of 1.01 percent and a social tax of .19 percent.¹⁹² The administrative tax would not change, resulting in an overall tax rate of 1.23 percent. The total tax liability would be \$12,300. Therefore, in our example, the employer would pay an increase in taxes in 2020 in the amount of \$2,700 if benefit charge relief was not available.

¹⁸⁹ The social tax rate will not be impacted under this scenario. A flat social tax is first calculated by subtracting total taxes paid from total benefits payments over the prior four-quarter period (July-June). This amount is then divided by total taxable payrolls and expressed as a percentage. The flat social tax rate has a maximum tax cap of 1.22 percent. We have estimated that the total cumulative impact of all of the proposed benefit charges will decrease the Trust Fund balance by \$15,312,240. When this amount is inserted into the calculation, the flat social tax number remains the same, which results in no change in the social tax for the non-charged employer.

¹⁹⁰ In these scenarios we are considering the impact to an employer's tax liability for one tax year (2020). If the proposed additional voluntary quit provisions are added to the law and an employer is charged with one of them, those charges remain on the employer's account for a total of four years. If there are no more benefit charges and other statutory requirements remain the same, the employer would pay the amount charged each year until the charges are cleared from the account.

¹⁹¹ See, *supra* note 189.

¹⁹² See, *supra* note 189.

In the third scenario, ESD assumes the employer has:

- The highest tax rate (rate class 40)
- 100 employees making \$50,000 each annually (\$20,000,000 taxable wage base)
- Two more VQ decisions to allow benefits

If the voluntary quits are not charged, the employer in our example will be in rate class 40 with total benefit charges of \$1,200,000.00, an experience tax of 5.4 percent and a social tax of .30 percent.¹⁹³ When the employer's .02 percent administrative tax is included, the overall tax rate is 5.72 percent resulting in a tax liability of \$286,000.

If the voluntary quits are charged, the employer in our example will remain in rate class 40 with total benefit charges of \$1,213,427.40, an experience tax of 5.4 percent and a social tax of .30 percent. When the employer's .02 percent administrative tax is included, the overall tax rate is 5.72 percent resulting in a tax liability of \$286,000. In our example, since the employer is at the maximum rate class, there would be no increase in taxes.

¹⁹³ See, *supra* note 189.

Voluntary quit stakeholder meeting summary

In 2020, the Legislature directed the Employment Security Department to study the impacts on Washington's unemployment insurance Trust Fund, and the contribution rates of employers, if three new voluntary quit reasons were added to the law allowing unemployment insurance benefits for individuals. The legislation also stated:

Sec. 2. (4)

While the employment security department is conducting the study, the department must meet at least three times with a representative of the largest business association and a representative from an organization which provides low-cost representation or free advice and counsel to people regarding their unemployment benefits to discuss the information gathered by the department.

This report summarizes the timing of those stakeholder meeting events during August, September and October of this year.

Our first scheduled presentation was on August 17th at the Employment Security Advisory Committee (ESAC) meeting. Bob Battles of the Association of Washington Business (AWB) and John Tirpak of the Unemployment Law Project (ULP) were in attendance.

Our first meeting with the business stakeholders' group was on October 7th, our second was on October 16th, and our third and final meeting with business was on October 22nd.

Our first meeting with the benefits claimant stakeholders' group (Unemployment Law Project) was on September 8th, our second was on September 29th, and our third and final meeting was on October 20th.

Each of these meetings allowed ESD staff and stakeholders to discuss our initial research findings, ask questions and make recommendations for the draft report. We all felt these meetings were beneficial and enhanced our draft report.

Recommendations

If the Legislature chooses to amend the law in the future, ESD recommends amending related statutes and regulations. Below, ESD offers specific recommendations for each reason that the Legislature has proposed to add to the reasons for good cause. ESD also offers separate recommendation for amendments if the Legislature wishes to relieve employers of the benefit charges to their experience rating accounts.

Aside from the changes proposed in SB 5473, ESD recommends combining and reenacting the two versions of RCW § 50.20.050.¹⁹⁴ In 2009, the statute was amended twice, each without reference to the other. As a result, each version of the statute presents an incomplete picture of the law.¹⁹⁵

Amendments: Inaccessible care

To make claimants eligible when they voluntarily quit due to lack of access to care for a child or vulnerable adult without accommodations from the employer, the legislature would need to amend:

- RCW 50.20.010 (Eligibility)
- RCW 50.20.100 (Suitable work)

Changes to the law may also impact:

- RCW 50.20.119 (Part-time workers)
- RCW 50.20.240 (Job search monitoring)
- RCW 50.20.080 (Disqualifying refusal of work)
- RCW 50.29.021 (Benefit charging notice for employers)

RCW 50.20.010 concerns requirements for availability of claimants. This section currently places requirements on claimants that they be available “during all of the usual hours and days of the week customary for your occupation,” that the claimant does not “impose conditions that substantially reduce or limit [their] opportunity to return to work at the earliest possible time” and that the claimant be available “during the hours customary for [their] trade or occupation.”¹⁹⁶

This statute should have a third numbered section added stating that “notwithstanding the requirements of (1) and (2), individuals with caregiving responsibilities can restrict their hours or days of availability if they can show that there is no other person to provide the care within their means, and that there is still a substantial market of employment open to them after the restrictions.” The proposed recommendation in HB 1445 allows claimants to restrict their availability to the claimant’s “typical workweek hours,” but this may unintentionally exclude people who have unexpectedly taken on new caregiving responsibilities. This is most relevant in the context of caring for vulnerable adults or when acquiring guardianship of minor children due to a death in the family. Additionally, the language used in HB 1445 would allow any claimant to limit their availability, not just those with caregiving responsibilities. If the legislature chooses to use the “typical workweek hours” language, it should also define what “typical workweek hours” are in this section.

Amend RCW 50.20.100(1) to add the individual’s ability to care for their child or vulnerable adult as a factor for suitability of work.

Note that RCW 50.20.119 would be affected by allowing claimants to restrict their availability, possibly resulting in wider eligibility for part-time workers who do not have caregiving responsibilities.

¹⁹⁴ RCW 50.20.050 as amended by 2009 c 247; *Id.* as amended by 2009 c 493.

¹⁹⁵ See HB 1445 § 3.

¹⁹⁶ WAC 192-170-010(1)(a)–(d).

Amendments: Changed working condition or increased job duties

To amend the law to include quitting on account of changed working conditions or increased job duties without a commensurate increase in pay, the legislature would need to amend RCW 50.20.050.

A broader allowance for quitting under this rationale would be allowed if the legislature were to add an additional section to RCW 50.20.050(2)(b) allowing quits for substantial changes in working conditions or increased job duties without a commensurate increase in pay.

Amendments: Relocating to be nearer to a minor child

To amend the law to allow individuals to quit so that they can relocate out of their current job market to follow a minor child, the legislature would need to amend RCW 50.20.050.

ESD recommends adding an additional reason for good cause under RCW 50.20.050(2)(b). To narrow the scope of the law, the legislature could place limitations on who could claim this exception. For instance, to avoid parents utilizing this statute to relocate on account of their child moving away to college at age 17, the law could allow relocating to be nearer to children under the age of 16. Alternatively, the law could restrict relocations to circumstances where the parent with primary custody unilaterally decided to move the child.

Amendments: Limiting impact to employer experience rating accounts

To limit the impact to employer experience rating accounts for any of these additional reasons for good cause, the Legislature would need to amend RCW 50.29.021.

In the current version of RCW 50.29.021(e), the statute prevents benefits for certain good cause reasons¹⁹⁷ from being charged to employer experience rating accounts. To avoid charging any of the additional reasons for good cause to employers, the Legislature should amend (e) to include references to the new voluntary quit reasons.

¹⁹⁷ Listed in RCW 50.20.050(2)(b).

Appendix 1: Changes due to the COVID-19 pandemic

This appendix explains why ESD chose not to include data or laws relating to the COVID-19 pandemic and describes changes to voluntary quit (VQ) policies made in response to the crisis. It also describes the impact of the pandemic on the claims ESD has received.

Why ESD did not analyze laws or data stemming from the pandemic

This study did not take any changes arising from the COVID-19 pandemic into account. It's likely that these unusual circumstances won't apply by the time these changes become effective. It will take several months for ESD to program computer systems so it can accommodate the new voluntary quit provisions. It would take even longer before employer tax rates would be impacted.

Additionally, almost every state has altered or enacted proposed changes to their VQ laws to allow for broader eligibility for those affected by the pandemic. Washington, like most other states, has a collection of emergency rules that affect claimants' eligibility. ESD determined that a survey of the mid-COVID legal landscape would be too difficult to ascertain, partially due to the law constantly adapting during the pandemic and partially because of the limited time frame allowed for this study. Similarly, ESD's data analysts excluded claims arising after the start of the pandemic from the Trust Fund impact study research.

Washington's unemployment law policies have changed significantly since the beginning of the pandemic, but policies surrounding VQs remain largely the same. At the time this report was written, Washington state's statutory VQ law remains as it was prior to the start of the pandemic. The legislature has not proposed changes to the law to reflect the changes made since the onset of the pandemic.

Emergency rule changes relating to voluntary quits in Washington state

ESD has enacted only limited rule changes to VQ laws. One emergency change the department made was to regulations relating to when a person voluntarily quits their job due to illness or disability.¹⁹⁸ Additionally, under another emergency rule, job separations that occur because an individual is directed to quarantine by a medical professional, is at high-risk of contracting COVID-19 or living in a high-risk household when telework is not an option, is treated as a layoff due to lack of work.¹⁹⁹ ESD also altered its regulations relating to suitable work factors: Now, in addition to considering whether the claimant has a disability that would prevent them from doing certain work, the department will also consider whether a "medical professional, local health official, or the Secretary of Health" has directed the claimant to self-isolate or quarantine due to COVID-19, regardless of whether they have a positive diagnosis.²⁰⁰

ESD also made two changes relating to employer experience rating accounts. The first was to ensure that if a medical professional, health official, or the Secretary of Health requested that an employee self-isolate or quarantine that the job separation resulting from the isolation is not chargeable to the employer.²⁰¹ The second was to not charge employer experience rating accounts for a separation due to a COVID-19 infection at the employer's place of business that causes the employer to close or severely limit operations.²⁰²

¹⁹⁸ See WAC 192-150-055; Emp. Sec. Dep't, Emergency Rule-Making Order WSR 20-07-039 (March 9, 2020).

¹⁹⁹ WAC 192-150-101.

²⁰⁰ Amendatory Section (Amending WSR 02-08-072).

²⁰¹ WAC 192-320-071.

²⁰² WAC 192-320-078.