Family Leave Insurance and Unemployment Benefits
Family Leave Taskforce
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Eligibility for family leave adds no additional entitlement to the state's unemployment-insurance (UI) benefits. Employees on family leave cannot collect UI benefits at the same time. Once family leave is over, some employees who are not able to return to their previous jobs will be eligible for UI benefits and some will not. Eligibility decisions would be made on a case-by-case basis. The determination process is the same one the department uses in all cases of leave or separation from employment.

Below are some examples of how UI claims would be decided, based on the particular facts of the case.

Businesses with more than 25 employees
Assume that:

1. The employer has **more than 25** employees and the employer is **legally required** to hold the job.
2. The employee qualifies for and takes family leave and wishes to return to work at the end of the leave.
3. The employee has worked enough hours to be eligible for UI.
4. The employee has the right under the family leave law to be reinstated to his or her previous position.
5. The employee is able and available to return to work.

Example 1 – There is an agreement between the employer and the employee that the employer will hold the job through the family leave period. At the end of the leave, the employer doesn't bring the employee back because work slowed down during the leave period.

The separation is a layoff for lack of work and the worker is eligible for UI. The separation occurs at the end of the leave. The separation is attributable to the employer per RCW 50.29.021, and unemployment benefits paid would be charged to the employer.

Example 2 – There is no agreement between the employer and the employee to hold the job, or there is a dispute about whether an agreement existed. The employer fills the job while the claimant is on family leave and does not allow the claimant to return to work.

Because the claimant had a reasonable expectation that the employer is required to hold the job and did not intend to quit, the separation is a discharge as of the claimant's last day of work. Benefits are likely allowed and chargeable to the employer, unless the employer establishes misconduct connected with the claimant's work.

Businesses with 25 or fewer employees
Assume that:

1. The employer has **25 or fewer** employees and the employer is **not** legally required to hold the job.
2. The employee qualifies for and takes family leave and wishes to return to work at the end of the leave.
3. The employee has worked enough hours to be eligible for UI.
4. The employee is able and available to return to work.

Example 3 – There is an agreement between the employer and the employee that the employer will hold the job through the family leave period. At the end of the leave, the employer doesn't bring the employee back because work slowed down during the leave period.

The separation is a layoff for lack of work and the worker is eligible for UI. The separation occurs at the end of the leave. The separation is attributable to the employer per RCW 50.29.021, and unemployment benefits paid would be charged to the employer.

Example 4 – There is no agreement between the employer and the employee to hold the job. The employer fills the job while the claimant is on family leave.

The separation is a "voluntary quit" as of the last day of employment, and the claimant would have to establish good cause for the quit. If the quit was due to the birth and/or care for a healthy baby (birth or adopted), benefits would be denied and no charges would be incurred by the employer because leaving work to care for a healthy child is not one of ten legally approved reasons that a worker may voluntarily quit "for good cause" and still be eligible for benefits.

Good cause could be established if individual circumstances warrant, independent of family-leave requirements. For example, the claimant's doctor advises the claimant to leave work to avoid risking the unborn child, and the claimant pursues all reasonable alternatives to quitting. Benefits could be allowed under RCW 50.20.050(2)(b)(ii) (illness or disability). The claimant could not collect benefits until she is able and available to return to work. Since the claimant quit for personal reasons, the employer could request that benefits paid not be charged to the employer.

Example 5 – There is no agreement between the employer and the employee to hold the job. The job has not been filled, or the work ends before the family leave is over. The employer decides not to have the employee return.

This is similar to Example 4. The separation is a voluntary quit as of the last day of employment, and the claimant would have to establish good cause for the quit.

Example 6 – There is a dispute between the employer and the employee about whether or not there was an agreement to hold the job. The employer fills the job or chooses not to let the employee return to work.

The Employment Security Department would do fact finding with both the employer and the employee. If the department determined that there was an agreement, the separation would be seen as a discharge and the claimant would be eligible for benefits, chargeable to the employer. If there were no agreement, the separation would be a voluntary quit as of the last day of employment, and the claimant would have to establish good cause for the quit.

Businesses that hire a temporary replacement worker
Assume that a business hires a temporary employee for five weeks to fill in for someone who is on family medical leave.

Is the temporary employee eligible for unemployment benefits when the permanent employee comes back?
The temporary employee may be eligible for unemployment benefits if he or she worked at least 680 hours in the past year and meets other eligibility criteria, such as:

- was laid off for lack of work
- quit for good cause
- was fired, but not for misconduct, **and**
- is able, available and actively seeking work.

Is a business charged for the full costs of unemployment benefits paid to the temporary employee who is laid off after a few weeks?
In most cases, the answer is no. "Base year employers" are charged for the cost of UI benefits. Most of the time, an employer who hires a temporary employee for five weeks would not be considered a base-year employer at the time of the lay-off. The base year typically is calculated from the first four of the last five completed calendar quarters. It takes a number of months before a particular employer becomes part of the "base year." For example, if a worker was hired January 1 and then laid off on February 15, the employer would not be considered a base-year employer until July. In a limited number of circumstances, a temporary employer could be considered a base-year employer and charged proportionately for the benefits.

However, there is one set of circumstances where the employer's tax rate would be affected by some or all of the benefit charges: if the temporary employer were both a "base-year employer" and the last employer, and the temporary employee quit his prior employment in order to accept a job offer from the temporary (and last) employer, that employer would be charged for benefits.