
SUBSTITUTE HOUSE BILL 1300

State of Washington**65th Legislature****2017 Regular Session**

By House Labor & Workplace Standards (originally sponsored by Representatives Riccelli, Gregerson, Peterson, Tharinger, Macri, Ryu, Fitzgibbon, Jinkins, Goodman, Stanford, Ormsby, Santos, Bergquist, and Farrell)

1 AN ACT Relating to simplifying and enforcing employee status
2 under employment laws to ensure fairness to employers and employees
3 and address the underground economy; amending RCW 39.12.010,
4 39.12.050, 49.46.010, 50.04.100, 50.04.298, 50.12.070, 50.12.072,
5 50.24.070, 51.08.070, and 51.08.180; reenacting and amending RCW
6 49.48.082; adding a new section to chapter 39.12 RCW; adding new
7 sections to chapter 49.52 RCW; adding a new section to chapter 49.48
8 RCW; adding a new section to chapter 49.46 RCW; adding new sections
9 to chapter 50.04 RCW; adding a new section to chapter 51.12 RCW;
10 adding a new chapter to Title 49 RCW; creating new sections;
11 repealing RCW 39.12.100, 50.04.140, 50.04.145, 51.08.181, and
12 51.08.195; and prescribing penalties.

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

14 NEW SECTION. **Sec. 1.** The legislature finds that underground
15 economic activity in this state results in millions of dollars of
16 lost revenue to the state and is unfair to workers and law-abiding
17 businesses. Misclassification is workplace fraud. Theft of wages by
18 employers through misclassification is a significant problem,
19 particularly in low-wage industries. The legislature intends to
20 improve compliance with wage-related laws to help address the

1 problems of the underground economy, level the playing field for
2 honest employers and contractors, and protect workers.

3 NEW SECTION. **Sec. 2.** This chapter may be known and cited as the
4 employee fair classification act.

5 NEW SECTION. **Sec. 3.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Department" means the department of labor and industries.

9 (2) "Director" means the director of the department of labor and
10 industries.

11 (3) "Employ" means to suffer or permit to work.

12 (4)(a) "Employee" means a person who performs labor or services
13 for an employer. A person may be an employee of two or more employers
14 at the same time.

15 (b) "Employee" does not include a bona fide independent
16 contractor.

17 (c) "Employee" also does not include:

18 (i) An individual employed in the capacity of an outside
19 salesperson paid solely by way of commission, as defined and
20 delimited by rule of the director;

21 (ii) An individual employed on a casual and sporadic basis; or

22 (iii) An individual who performs services for an educational,
23 charitable, religious, government, or nonprofit organization and who
24 offers his or her services freely and without pressure or coercion,
25 direct or implied, and without any contemplation or expectation of
26 payment. An individual who receives reimbursement for actual expenses
27 or who receives maintenance, which includes costs for meals and
28 transient lodging incurred while performing volunteer duties, does
29 not lose his or her status as a nonemployee.

30 (5)(a) "Employer" means any of the following that employ a
31 person: (i) An individual; (ii) any form of business entity, or the
32 receiver, trustee, or successor of a business entity; (iii) an
33 administrator or executor of an estate; or (iv) the state or any
34 agency, instrumentality, or political subdivision of the state.
35 "Employer" includes an individual or entity that acts directly or
36 indirectly in the interest of an employer in relation to employing a
37 person. More than one entity may be the "employer," including in
38 circumstances where one entity controls, is controlled by, or is

1 under common control with another employer, or where one entity
2 exerts control over the operations of another employer.

3 (b) "Employer" does not include agencies, authorities, or
4 instrumentalities of the United States, its possessions and
5 territories, the commonwealth of Puerto Rico, or the District of
6 Columbia.

7 (6) "Front pay" means the compensation the employee would earn if
8 reinstated to his or her former position.

9 (7)(a) "Independent contractor" means an individual who performs
10 labor or services for a party when either:

11 (i)(A) The individual is and will continue to be free from
12 control or direction over the performance of the labor or services by
13 the party for whom the labor or services are performed, both under
14 the contract of labor or service and in fact. Control or direction
15 includes the right to control or direct as well as general control or
16 direction over the individual's physical activities;

17 (B) The labor or service is either outside the usual course of
18 business for which the labor or service is performed, or the labor or
19 service is performed outside of all the places of business of the
20 enterprise for which the labor or service is performed;

21 (C) The individual is customarily engaged in an independently
22 established trade, occupation, business, or profession of the same
23 nature as that involved in the contract of labor or service;

24 (D) On the effective date of the contract of service, the
25 individual is responsible for filing at the next applicable filing
26 period, both under the contract of service and in fact, a schedule of
27 expenses with the internal revenue service for the type of business
28 the individual is conducting;

29 (E) On the effective date of the contract of service, or within a
30 reasonable period after the effective date of the contract, the
31 individual has established an account with the department of revenue,
32 and other state agencies as required by the particular case, for the
33 business the individual is conducting for the payment of all state
34 taxes normally paid by employers and businesses and has registered
35 for and received a unified business identifier number from the state
36 of Washington; and

37 (F) On the effective date of the contract of service, the
38 individual is maintaining a separate set of books or records that
39 reflect all items of income and expenses of the business which the
40 individual is conducting; and

1 (G) If the individual is performing services that require
2 registration under chapter 18.27 RCW or licensing under chapter 19.28
3 RCW for remuneration under an independent contract, on the effective
4 date of the contract for service the individual has a valid
5 contractor registration under chapter 18.27 RCW or an electrical
6 contractor license under chapter 19.28 RCW; or

7 (ii)(A) The individual is and will continue to be free from
8 control or direction over the performance of the labor or services by
9 the party for whom the labor or services are performed, both under
10 the contract of labor or service and in fact. Control or direction
11 includes the right to control or direct as well as general control or
12 direction over the individual's physical activities;

13 (B) The individual's business is not financially dependent on the
14 relationship with the party for whom the labor or services are
15 performed and the business continues after the cancellation or
16 destruction of the relationship with that party;

17 (C) The individual has a substantial investment of capital in the
18 individual's business beyond ordinary tools and equipment and a
19 personal vehicle;

20 (D) The individual gains profits and bears losses from the
21 business as a result of his or her managerial skills and substantial
22 investment of capital in the individual's business;

23 (E) The individual makes his or her labor or services available
24 to the general public or the business community on a continuing
25 basis;

26 (F) The individual files at the next applicable filing period,
27 both under the contract of service and in fact, a schedule of
28 expenses with the internal revenue service for the type of business
29 the individual is conducting;

30 (G) The party for whom the labor or services are performed does
31 not represent the individual as an employee of that party to its
32 customers;

33 (H) The individual has the right, under contract and in fact, to
34 perform similar labor or services for others on whatever basis and
35 whenever he or she chooses;

36 (I) The individual has an active and valid certificate of
37 registration with the department of revenue and an active and valid
38 account with any other state agencies as required by the particular
39 case, for the business the individual is conducting for the payment
40 of all state taxes normally paid by employers and businesses and has

1 registered for and received a unified business identifier number from
2 the state of Washington; and

3 (J) The individual is maintaining a separate set of books or
4 records that reflect all items of income and expenses of the business
5 that the individual is conducting.

6 (b) In determining whether an individual is an independent
7 contractor, acts taken by an employer to comply with local, state, or
8 federal laws or regulations may not be considered as proof of
9 independent contractor status.

10 (8) "Misclassification" means designating an employee as a
11 nonemployee of the employer.

12 (9)(a) "Pattern or practice" means that, in addition to the
13 current violation, within the previous ten years the employer was:

14 (i) Convicted of a criminal violation of a state or local law
15 concerning nonpayment of wages;

16 (ii) Subject to a court order entering final judgment for a
17 violation of this chapter or chapter 39.12, 49.46, 49.48, or 49.52
18 RCW, and the judgment was not satisfied or current within thirty days
19 of the later of: (A) The expiration of the time for appealing the
20 order; or (B) if a timely appeal was made, the date of the final
21 resolution of the appeal; or

22 (iii) Subject to a final and binding citation and notice of
23 assessment from the department for a violation of this chapter or
24 chapter 39.12 or 49.48 RCW, and the citation and penalty was not
25 satisfied or current within thirty days of the date the citation
26 became final and binding.

27 (b) For purposes of this subsection (9), an employer includes a
28 successor employer, as defined in RCW 49.48.082.

29 (10) "Person" means a natural person, firm, partnership,
30 corporation, association, or organization.

31 (11) "Willful" means a knowing and intentional action that is
32 neither accidental nor the result of a bona fide dispute.

33 NEW SECTION. **Sec. 4.** (1) An employer-employee relationship
34 exists when an individual performs labor or services for an employer.
35 The party asserting that an individual is not an employee must
36 establish by a preponderance of the evidence that the individual is
37 an independent contractor or is otherwise not an employee under this
38 chapter.

1 (2) A general contractor is not responsible for violations of a
2 bona fide independent contractor or subcontractor under this chapter
3 unless the general contractor exerts substantial control over the
4 day-to-day work of the independent contractor or subcontractor. For
5 purposes of this subsection:

6 (a) "General contractor" means the contractor required to be
7 registered under chapter 18.27 RCW or licensed under chapter 19.28
8 RCW whose business operations for a project require the use of more
9 than one building trade or craft upon a single job or project, under
10 a single building permit, and who has responsibility to superintend
11 the project as a whole.

12 (b) "Subcontractor" means a contractor who engages in a business
13 that is required to be registered under chapter 18.27 RCW or licensed
14 under chapter 19.28 RCW and who is not a general contractor.

15 NEW SECTION. **Sec. 5.** (1) An employer may not willfully
16 misclassify an employee as an independent contractor.

17 (2) A person may not charge an employee who has been
18 misclassified as an independent contractor a fee, or make any
19 deductions from compensation for any purpose, including for goods,
20 materials, space rental, services, government licenses, repair,
21 equipment maintenance, or fines arising from the employment where any
22 of the acts would have violated the law if the individual had not
23 been misclassified.

24 (3) A person may not require or request an employee to enter into
25 an agreement or sign a document that results in the misclassification
26 of the employee as an independent contractor or otherwise does not
27 accurately reflect the employee's relationship with the employer.

28 (4) A person may not perform the following acts for the purpose
29 of facilitating or evading detection of a violation of this chapter:

30 (a) Form, assist in, or induce the formation of a corporation,
31 partnership, limited liability company, or other business entity; or

32 (b) Pay or collect a fee for use of a foreign or domestic
33 corporation, partnership, limited liability company, or other
34 business entity.

35 (5) A person may not, for remuneration, conspire with, aid and
36 abet, assist, or advise an employer with the intent of violating this
37 chapter.

1 NEW SECTION. **Sec. 6.** (1) The department may conduct an
2 investigation if it obtains information indicating a person may have
3 violated this chapter, but the department may not investigate a
4 violation of this chapter that occurred more than three years before
5 the date of the violation. For the purposes of this section, a
6 violation occurs from the initial date of misclassification and for
7 as long as the employee continues to be misclassified. The three-year
8 period is tolled during any period of time that an employer, any of
9 its agents, or any person acting on behalf of the employer deters an
10 individual from filing a complaint under this section.

11 (2) If the department determines that a person violated this
12 chapter, it may:

13 (a) For a violation of section 8 of this act, order the employer
14 to pay a civil penalty of not less than one thousand dollars and not
15 more than ten thousand dollars;

16 (b) For a violation of section 5 of this act, order the person to
17 pay a civil penalty of: (i) Not less than one thousand dollars and
18 not more than ten thousand dollars per employee; or (ii) if the
19 person has engaged in a pattern or practice of violations, not less
20 than ten thousand dollars and not more than twenty-five thousand
21 dollars per employee;

22 (c) For a violation of section 5 of this act, order persons,
23 including employers, to jointly and severally pay the following: (i)
24 Three times the amount of wages, salary, and employment benefits
25 denied or withheld, except benefits under Title 50 or 51 RCW; and
26 (ii) reimbursement for taxes and the value of any benefits paid by
27 the employee;

28 (d) In addition, for a violation of section 5 of this act, order
29 the employer to pay any taxes owed, reinstate the employee, and
30 properly classify the employee. The director may award front pay in
31 lieu of reinstatement;

32 (e) Determine whether to initiate collection procedures pursuant
33 to RCW 51.16.150 through 51.16.190, and send a copy of its
34 determination, including any supporting documentation, to the
35 employment security department; and

36 (f) The department must consider referrals based on a court
37 finding of a violation of section 5 of this act to determine whether
38 to initiate collection procedures.

39 (3) An employer may appeal the department's determination
40 pursuant to RCW 49.48.084.

1 (4) The department must deposit civil penalties collected under
2 this chapter into the employee fair classification act account
3 created in section 9 of this act.

4 NEW SECTION. **Sec. 7.** (1) An individual aggrieved by a violation
5 of section 5 of this act may bring suit on behalf of himself or
6 herself or on behalf of any other individual who is similarly
7 situated.

8 (2) If a court determines that a person or persons, including
9 employers, violated section 5 of this act, it:

10 (a) Shall order persons, including employers, to jointly and
11 severally pay the greater of:

12 (i) Three times the amount of any wages including overtime,
13 salary, and employment benefits unlawfully denied or withheld except
14 benefits under Titles 50 and 51 RCW; or

15 (ii) Statutory damages for each employee aggrieved by the
16 violation. Statutory damages must not be less than one thousand
17 dollars and not more than ten thousand dollars per employee, unless
18 the person engaged in a pattern or practice of violations, in which
19 case the statutory damages must be not less than ten thousand dollars
20 and not more than twenty-five thousand dollars per employee;

21 (b) May order persons, including employers, to jointly and
22 severally pay the employee reimbursement for any taxes and the value
23 of any benefits paid by the employee; and

24 (c) Shall order persons, including employers, to jointly and
25 severally pay attorneys' fees and costs.

26 (3) If a court determines that an employer violated section 5 of
27 this act, it may order the employer to pay any taxes owed and award
28 injunctive or other equitable relief, including reinstatement and
29 reclassification of the employee with terms and conditions at least
30 as favorable as those that applied when the employee was
31 misclassified, including rate of compensation, value of any benefits,
32 and hours of work. The court may award front pay in lieu of
33 reinstatement.

34 (4) A civil action under this section must be brought no later
35 than three years after the violation occurred. For the purposes of
36 this section, a violation occurs from the initial date of
37 misclassification and for as long as the employee continues to be
38 misclassified. The three-year period is tolled during any period of
39 time that an employer, any of its agents, or any person acting on

1 behalf of the employer deters an individual from bringing an action
2 under this section.

3 NEW SECTION. **Sec. 8.** (1) If an employer engages an individual
4 to perform labor or services for remuneration and considers the
5 individual to be an independent contractor, the employer shall post
6 and keep posted the following notice:

7 "Every worker has the right to be properly classified as an
8 employee rather than an independent contractor if the
9 individual does not meet the requirements of an independent
10 contractor under the law known as the employee fair
11 classification act.

12 If you believe you or someone else has been improperly
13 classified as an independent contractor under the employee
14 fair classification act, you have the right to challenge this
15 classification by filing a complaint with the department of
16 labor and industries or by bringing an action in state
17 court."

18 (2) The notice required by this section must be in English,
19 Spanish, and any other language or languages primarily spoken by the
20 majority of the workforce. The notice must be posted in a conspicuous
21 place in each of the employer's offices in the state and at each job
22 site where a worker classified as an independent contractor performs
23 labor or services.

24 NEW SECTION. **Sec. 9.** The employee fair classification act
25 account is created in the state treasury. All receipts from civil
26 penalties issued under section 6 of this act must be deposited in the
27 account. Moneys in the account may be spent only after appropriation.
28 Expenditures from the account may be used only for enforcement of
29 this chapter.

30 NEW SECTION. **Sec. 10.** The department may adopt rules to
31 implement this chapter. In addition, the department may develop a
32 plan for strategic enforcement of this chapter, prioritizing
33 industries and workplaces with a high concentration of violations.

34 **PREVAILING WAGE**

1 **Sec. 11.** RCW 39.12.010 and 1989 c 12 s 6 are each amended to
2 read as follows:

3 (1) The "prevailing rate of wage," for the intents and purposes
4 of this chapter, shall be the rate of hourly wage, usual benefits,
5 and overtime paid in the locality, as hereinafter defined, to the
6 majority of workers, laborers, or mechanics, in the same trade or
7 occupation. In the event that there is not a majority in the same
8 trade or occupation paid at the same rate, then the average rate of
9 hourly wage and overtime paid to such laborers, workers, or mechanics
10 in the same trade or occupation shall be the prevailing rate. If the
11 wage paid by any contractor or subcontractor to laborers, workers, or
12 mechanics on any public work is based on some period of time other
13 than an hour, the hourly wage for the purposes of this chapter shall
14 be mathematically determined by the number of hours worked in such
15 period of time.

16 (2) The "locality" for the purposes of this chapter shall be the
17 largest city in the county wherein the physical work is being
18 performed.

19 (3) The "usual benefits" for the purposes of this chapter shall
20 include the amount of:

21 (a) The rate of contribution irrevocably made by a contractor or
22 subcontractor to a trustee or to a third person pursuant to a fund,
23 plan, or program; and

24 (b) The rate of costs to the contractor or subcontractor which
25 may be reasonably anticipated in providing benefits to workers,
26 laborers, and mechanics pursuant to an enforceable commitment to
27 carry out a financially responsible plan or program which was
28 communicated in writing to the workers, laborers, and mechanics
29 affected, for medical or hospital care, pensions on retirement or
30 death, compensation for injuries or illness resulting from
31 occupational activity, or insurance to provide any of the foregoing,
32 for unemployment benefits, life insurance, disability and sickness
33 insurance, or accident insurance, for vacation and holiday pay, for
34 defraying costs of apprenticeship or other similar programs, or for
35 other bona fide fringe benefits, but only where the contractor or
36 subcontractor is not required by other federal, state, or local law
37 to provide any of such benefits.

38 (4) "Employee" has the same meaning as "laborers, workers, and
39 mechanics."

1 (5) "Employer" and "independent contractor" have the same
2 meanings as in section 3 of this act.

3 (6)(a) "Pattern or practice" means that, in addition to the
4 current violation, within the previous ten years the employer was:

5 (i) Convicted of a criminal violation of a state or local law
6 concerning nonpayment of wages;

7 (ii) Subject to a court order entering final judgment for a
8 violation of this chapter or chapter 49.46, 49.48, 49.52, or 49.---
9 RCW (the new chapter created in section 30 of this act), and the
10 judgment was not satisfied or current within thirty days of the later
11 of: (A) The expiration of the time for appealing the order; or (B) if
12 a timely appeal was made, the date of the final resolution of the
13 appeal; or

14 (iii) Subject to a final and binding citation and notice of
15 assessment from the department of labor and industries for a
16 violation of this chapter or chapter 49.48 RCW, and the citation and
17 penalty was not satisfied or current within thirty days of the date
18 the citation became final and binding.

19 (b) For purposes of this subsection (6), an employer includes a
20 successor employer, as defined in RCW 49.48.082.

21 (7) An "interested party" for the purposes of this chapter shall
22 include a contractor, subcontractor, an employee of a contractor or
23 subcontractor, an organization whose members' wages, benefits, and
24 conditions of employment are affected by this chapter, and the
25 director of labor and industries or the director's designee.

26 NEW SECTION. Sec. 12. A new section is added to chapter 39.12
27 RCW to read as follows:

28 An employer-employee relationship exists when a laborer, worker,
29 or mechanic performs labor for an employer. The party asserting that
30 an individual is not an employee must establish by a preponderance of
31 the evidence that the individual is an independent contractor.

32 Sec. 13. RCW 39.12.050 and 2009 c 219 s 3 are each amended to
33 read as follows:

34 (1) Any contractor or subcontractor who files a false statement
35 or fails to file any statement or record required to be filed under
36 this chapter and the rules adopted under this chapter, shall, after a
37 determination to that effect has been issued by the director after
38 hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum

1 of five hundred dollars for each false filing or failure to file, and
2 shall not be permitted to bid, or have a bid considered, on any
3 public works contract until the penalty has been paid in full to the
4 director. The civil penalty under this subsection shall not apply to
5 a violation determined by the director to be an inadvertent filing or
6 reporting error. Civil penalties shall be deposited in the public
7 works administration account.

8 To the extent that a contractor or subcontractor has not paid
9 wages at the rate due pursuant to RCW 39.12.020, and a finding to
10 that effect has been made as provided by this subsection, such unpaid
11 wages shall constitute a lien against the bonds and retainage as
12 provided in RCW 18.27.040, 19.28.041, 39.08.010, and 60.28.011.

13 (2) If a contractor or subcontractor is found to have (~~violated~~
14 ~~the provisions of subsection (1) of this section for a second time~~
15 ~~within a five year period~~) engaged in a pattern or practice of
16 violations, the contractor or subcontractor shall be subject to the
17 sanctions prescribed in subsection (1) of this section and shall not
18 be allowed to bid on any public works contract for one year. The one
19 year period shall run from the date of notice by the director of the
20 determination of noncompliance. When an appeal is taken from the
21 director's determination, the one year period shall commence from the
22 date of the final determination of the appeal.

23 The director shall issue his or her findings that a contractor or
24 subcontractor has violated the provisions of this subsection after a
25 hearing held subject to the provisions of chapter 34.05 RCW.

26 WAGE DEDUCTIONS

27 NEW SECTION. **Sec. 14.** A new section is added to chapter 49.52
28 RCW to read as follows:

29 (1) "Employer" and "independent contractor" have the same
30 meanings as in section 3 of this act.

31 (2) "Employee" has the same meaning as in section 3(4) (a) and
32 (b) of this act.

33 NEW SECTION. **Sec. 15.** A new section is added to chapter 49.52
34 RCW to read as follows:

35 (1) An employer-employee relationship exists when an individual
36 performs labor or services for an employer. The party asserting that

1 an individual is not an employee must establish by a preponderance of
2 the evidence that the individual is an independent contractor.

3 (2) A general contractor is not responsible for violations of a
4 bona fide independent contractor or subcontractor under this chapter
5 unless the general contractor exerts substantial control over the
6 day-to-day work of the independent contractor or subcontractor. For
7 purposes of this section, "general contractor" and "subcontractor"
8 have the same meanings as in section 4(2) (a) and (b) of this act.

9 WAGE PAYMENT ACT

10 **Sec. 16.** RCW 49.48.082 and 2010 c 42 s 1 are each reenacted and
11 amended to read as follows:

12 The definitions in this section apply throughout this section and
13 RCW 49.48.083 through 49.48.086:

14 (1) "Citation" means a written determination by the department
15 that a wage payment requirement has been violated.

16 (2) "Department" means the department of labor and industries.

17 (3) "Determination of compliance" means a written determination
18 by the department that wage payment requirements have not been
19 violated.

20 (4) "Director" means the director of the department of labor and
21 industries, or the director's authorized representative.

22 (5) "Employee" has the meaning provided in: (a) RCW 49.46.010 for
23 purposes of a wage payment requirement set forth in RCW 49.46.020 or
24 49.46.130; and (b) (~~RCW 49.12.005~~) section 3(4) (a) and (b) of this
25 act for purposes of a wage payment requirement set forth in RCW
26 49.48.010, 49.52.050, or 49.52.060.

27 (6) "Employer" (~~has the meaning provided in RCW 49.46.010 for~~
28 ~~purposes of a wage payment requirement set forth in RCW 49.46.020,~~
29 ~~49.46.130, 49.48.010, 49.52.050, or 49.52.060~~) and "independent
30 contractor" have the same meanings as in section 3 of this act.

31 (7) "Notice of assessment" means a written notice by the
32 department that, based on a citation, the employer shall pay the
33 amounts assessed under RCW 49.48.083.

34 (8) "Repeat willful violator" means any employer that has been
35 the subject of a final and binding citation and notice of assessment
36 for a willful violation of a wage payment requirement within three
37 years of the date of issue of the most recent citation and notice of
38 assessment for a willful violation of a wage payment requirement.

1 (9) "Successor" means any person to whom an employer quitting,
2 selling out, exchanging, or disposing of a business sells or
3 otherwise conveys in bulk and not in the ordinary course of the
4 employer's business, more than fifty percent of the property, whether
5 real or personal, tangible or intangible, of the employer's business.

6 (10) "Wage" has the meaning provided in RCW 49.46.010.

7 (11) "Wage complaint" means a complaint from an employee to the
8 department that asserts that an employer has violated one or more
9 wage payment requirements and that is reduced to writing.

10 (12) "Wage payment requirement" means a wage payment requirement
11 set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or
12 49.52.060, and any related rules adopted by the department.

13 (13) "Willful" means a knowing and intentional action that is
14 neither accidental nor the result of a bona fide dispute, as
15 evaluated under the standards applicable to wage payment violations
16 under RCW 49.52.050(2).

17 NEW SECTION. **Sec. 17.** A new section is added to chapter 49.48
18 RCW to read as follows:

19 (1) An employer-employee relationship exists when an individual
20 performs labor or services for an employer. The party asserting that
21 an individual is not an employee must establish by a preponderance of
22 the evidence that the individual is an independent contractor or is
23 otherwise not an employee under this chapter.

24 (2) A general contractor is not responsible for violations of a
25 bona fide independent contractor or subcontractor under this chapter
26 unless the general contractor exerts substantial control over the
27 day-to-day work of the independent contractor or subcontractor. For
28 purposes of this section, "general contractor" and "subcontractor"
29 have the same meaning as in section 4(2) (a) and (b) of this act.

30 **MINIMUM WAGE ACT**

31 **Sec. 18.** RCW 49.46.010 and 2015 c 299 s 3 are each amended to
32 read as follows:

33 As used in this chapter:

34 (1) "Director" means the director of labor and industries;

35 (2) (~~"Employ" includes to permit to work~~) "Department,"
36 "employ," and "employer" have the same meanings as in section 3 of
37 this act;

1 (3) "Employee" (~~includes any individual employed by an employer~~
2 ~~but~~) has the same meaning as in section 3(4) (a) and (b) of this act
3 and shall not include:

4 (a) Any individual (i) employed as a hand harvest laborer and
5 paid on a piece rate basis in an operation which has been, and is
6 generally and customarily recognized as having been, paid on a piece
7 rate basis in the region of employment; (ii) who commutes daily from
8 his or her permanent residence to the farm on which he or she is
9 employed; and (iii) who has been employed in agriculture less than
10 thirteen weeks during the preceding calendar year;

11 (b) Any individual employed in casual labor in or about a private
12 home, unless performed in the course of the employer's trade,
13 business, or profession;

14 (c) Any individual employed in a bona fide executive,
15 administrative, or professional capacity or in the capacity of
16 outside salesperson as those terms are defined and delimited by rules
17 of the director. However, those terms shall be defined and delimited
18 by the human resources director pursuant to chapter 41.06 RCW for
19 employees employed under the director of personnel's jurisdiction;

20 (d) Any individual engaged in the activities of an educational,
21 charitable, religious, state or local governmental body or agency, or
22 nonprofit organization where the employer-employee relationship does
23 not in fact exist or where the services are rendered to such
24 organizations gratuitously. If the individual receives reimbursement
25 in lieu of compensation for normally incurred out-of-pocket expenses
26 or receives a nominal amount of compensation per unit of voluntary
27 service rendered, an employer-employee relationship is deemed not to
28 exist for the purpose of this section or for purposes of membership
29 or qualification in any state, local government, or publicly
30 supported retirement system other than that provided under chapter
31 41.24 RCW;

32 (e) Any individual employed full time by any state or local
33 governmental body or agency who provides voluntary services but only
34 with regard to the provision of the voluntary services. The voluntary
35 services and any compensation therefor shall not affect or add to
36 qualification, entitlement, or benefit rights under any state, local
37 government, or publicly supported retirement system other than that
38 provided under chapter 41.24 RCW;

39 (f) Any newspaper vendor, carrier, or delivery person selling or
40 distributing newspapers on the street, to offices, to businesses, or

1 from house to house and any freelance news correspondent or
2 "stringer" who, using his or her own equipment, chooses to submit
3 material for publication for free or a fee when such material is
4 published;

5 (g) Any carrier subject to regulation by Part 1 of the Interstate
6 Commerce Act;

7 (h) Any individual engaged in forest protection and fire
8 prevention activities;

9 (i) Any individual employed by any charitable institution charged
10 with child care responsibilities engaged primarily in the development
11 of character or citizenship or promoting health or physical fitness
12 or providing or sponsoring recreational opportunities or facilities
13 for young people or members of the armed forces of the United States;

14 (j) Any individual whose duties require that he or she reside or
15 sleep at the place of his or her employment or who otherwise spends a
16 substantial portion of his or her work time subject to call, and not
17 engaged in the performance of active duties;

18 (k) Any resident, inmate, or patient of a state, county, or
19 municipal correctional, detention, treatment or rehabilitative
20 institution;

21 (l) Any individual who holds a public elective or appointive
22 office of the state, any county, city, town, municipal corporation or
23 quasi municipal corporation, political subdivision, or any
24 instrumentality thereof, or any employee of the state legislature;

25 (m) All vessel operating crews of the Washington state ferries
26 operated by the department of transportation;

27 (n) Any individual employed as a seaman on a vessel other than an
28 American vessel;

29 (o) Any farm intern providing his or her services to a small farm
30 which has a special certificate issued under RCW 49.12.470;

31 (p) An individual who is at least sixteen years old but under
32 twenty-one years old, in his or her capacity as a player for a junior
33 ice hockey team that is a member of a regional, national, or
34 international league and that contracts with an arena owned,
35 operated, or managed by a public facilities district created under
36 chapter 36.100 RCW;

37 (4) (~~("Employer" includes any individual, partnership,~~
38 ~~association, corporation, business trust, or any person or group of~~
39 ~~persons acting directly or indirectly in the interest of an employer~~
40 ~~in relation to an employee;~~

1 independent contractor or that the services are otherwise not in
2 employment under this title.

3 **Sec. 22.** RCW 50.04.100 and 1982 1st ex.s. c 18 s 14 are each
4 amended to read as follows:

5 "Employment," subject only to the other provisions of this title,
6 means personal service, of whatever nature, unlimited by the
7 relationship of master and servant as known to the common law or any
8 other legal relationship, including service in interstate commerce,
9 performed for wages or under any contract calling for the performance
10 of personal services, written or oral, express or implied.

11 (~~Except as provided by RCW 50.04.145,~~) Personal services
12 performed for an employing unit by one or more contractors or
13 subcontractors acting individually or as a partnership, which do not
14 meet the provisions of (~~RCW 50.04.140~~) section 20 of this act,
15 shall be considered employment of the employing unit: PROVIDED,
16 HOWEVER, That such contractor or subcontractor shall be an employer
17 under the provisions of this title in respect to personal services
18 performed by individuals for such contractor or subcontractor.

19 **Sec. 23.** RCW 50.04.298 and 2007 c 146 s 8 are each amended to
20 read as follows:

21 For the purposes of this title:

22 (1) "Professional employer organization" means a person or entity
23 that enters into an agreement with one or more client employers to
24 provide professional employer services. "Professional employer
25 organization" includes entities that use the term "staff leasing
26 company," "permanent leasing company," "registered staff leasing
27 company," "employee leasing company," "administrative employer," or
28 any other name, when they provide professional employer services to
29 client employers. The following are not classified as professional
30 employer organizations: Independent contractors in (~~RCW 50.04.140~~)
31 section 20 of this act; temporary staffing services companies and
32 services referral agencies as defined in RCW 50.04.245; third-party
33 payers as defined in RCW 50.04.248; or labor organizations.

34 (2) "Client employer" means any employer who enters into a
35 professional employer agreement with a professional employer
36 organization.

1 (3) "Coemployer" means either a professional employer
2 organization or a client employer that has entered into a
3 professional employer agreement.

4 (4) "Covered employee" means an individual performing services
5 for a client employer that constitutes employment under this title.

6 (5) "Professional employer services" means services provided by
7 the professional employer organization to the client employer, which
8 include, but are not limited to, human resource functions, risk
9 management, or payroll administration services, in a coemployment
10 relationship.

11 (6) "Coemployment relationship" means a relationship that is
12 intended to be ongoing rather than temporary or project-specific,
13 where the rights, duties, and obligations of an employer in an
14 employment relationship are allocated between coemployers pursuant to
15 a professional employer agreement and state law. A coemployment
16 relationship exists only if a majority of the employees performing
17 services to a client employer, or to a division or work unit of a
18 client employer, are covered employees. In determining the allocation
19 of rights and obligations in a coemployment relationship:

20 (a) The professional employer organization has only those
21 employer rights and is subject only to those obligations specifically
22 allocated to it by the professional employer agreement or state law;

23 (b) The client employer has those rights and obligations
24 allocated to it by the professional employer agreement or state law,
25 as well as any other right or obligation of an employer that is not
26 specifically allocated by the professional employer agreement or
27 state law.

28 (7) "Professional employer agreement" means a written contract
29 between a client employer and a professional employer organization
30 that provides for: (a) The coemployment of covered employees; and (b)
31 the allocation of employer rights and obligations between the client
32 and the professional employer organization with respect to the
33 covered employees.

34 **Sec. 24.** RCW 50.12.070 and 2013 c 250 s 1 are each amended to
35 read as follows:

36 (1)(a) Each employing unit shall keep true and accurate work
37 records, containing such information as the commissioner may
38 prescribe. Such records shall be open to inspection and be subject to
39 being copied by the commissioner or his or her authorized

1 representatives at any reasonable time and as often as may be
2 necessary. The commissioner may require from any employing unit any
3 sworn or unsworn reports with respect to persons employed by it,
4 which he or she deems necessary for the effective administration of
5 this title.

6 (b) An employer who contracts with another person or entity for
7 work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve
8 a record of the unified business identifier account number for and
9 compensation paid to the person or entity performing the work. In
10 addition to the penalty in subsection (3) of this section, failure to
11 obtain or maintain the record is subject to RCW 39.06.010.

12 (2)(a) Each employer shall register with the department and
13 obtain an employment security account number. Each employer shall
14 make periodic reports at such intervals as the commissioner may by
15 regulation prescribe, setting forth the remuneration paid for
16 employment to workers in its employ, the full names and social
17 security numbers of all such workers, and the total hours worked by
18 each worker and such other information as the commissioner may by
19 regulation prescribe.

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

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

39 (ii) An employer who reimburses the trust fund for benefits paid
40 to workers and fails to report the number of hours worked shall

1 reimburse the trust fund for all benefits paid that are based on
2 hours computed under this subsection.

3 (3) Any employer who fails to keep and preserve records required
4 by this section shall be subject to a penalty determined by the
5 commissioner but not to exceed two hundred fifty dollars or two
6 hundred percent of the quarterly tax for each offense, whichever is
7 greater.

8 (4) Upon referral from the department of labor and industries
9 pursuant to section 6 of this act, the employment security department
10 may initiate procedures for improper recordkeeping and the recovery
11 of contributions, interest, and penalties.

12 **Sec. 25.** RCW 50.12.072 and 2010 c 72 s 2 are each amended to
13 read as follows:

14 (1) An employer that knowingly fails to register with the
15 department and obtain an employment security account number, as
16 required under RCW 50.12.070(2), is subject to a penalty not to
17 exceed one thousand dollars per quarter or two times the taxes due
18 per quarter, whichever is greater. This penalty is in addition to all
19 other penalties and is in addition to higher rates for employers that
20 do not meet the definition of "qualified employer" under RCW
21 50.29.010. This penalty does not apply if the employer can prove that
22 it had good cause to believe that it was not required to register
23 with the department.

24 (2) Upon referral from the department of labor and industries
25 pursuant to section 6 of this act, the employment security department
26 may initiate procedures for improper recordkeeping and the recovery
27 of contributions, interest, and penalties.

28 **Sec. 26.** RCW 50.24.070 and 2011 c 301 s 18 are each amended to
29 read as follows:

30 (1) At any time after the commissioner shall find that any
31 contributions, interest, or penalties have become delinquent, the
32 commissioner may issue an order and notice of assessment specifying
33 the amount due, which order and notice of assessment shall be served
34 upon the delinquent employer in the manner prescribed for the service
35 of a summons in a civil action, or using a method by which the
36 mailing can be tracked or the delivery can be confirmed. Failure of
37 the employer to receive such notice or order whether served or mailed

1 shall not release the employer from any tax, or any interest or
2 penalties thereon.

3 (2) The commissioner must consider referrals based on a court
4 finding of a violation of section 5 of this act and may pursue a
5 claim for contributions.

6 **INDUSTRIAL INSURANCE**

7 **Sec. 27.** RCW 51.08.070 and 2008 c 102 s 2 are each amended to
8 read as follows:

9 "Employer" means any person, body of persons, corporate or
10 otherwise, and the legal representatives of a deceased employer, all
11 while engaged in this state in any work covered by the provisions of
12 this title, by way of trade or business, or who contracts with one or
13 more workers, the essence of which is the personal labor of such
14 worker or workers. Or as an exception to the definition of employer,
15 persons or entities are not employers when they contract or agree to
16 remunerate the services performed by an (~~individual who meets the~~
17 ~~tests set forth in subsections (1) through (6) of RCW 51.08.195 or~~
18 ~~the separate tests set forth in RCW 51.08.181 for work performed that~~
19 ~~requires registration under chapter 18.27 RCW or licensing under~~
20 ~~chapter 19.28 RCW~~) independent contractor as defined in section 3 of
21 this act.

22 **Sec. 28.** RCW 51.08.180 and 2008 c 102 s 3 are each amended to
23 read as follows:

24 "Worker" means every person in this state who is engaged in the
25 employment of an employer under this title, whether by way of manual
26 labor or otherwise in the course of his or her employment; also every
27 person in this state who is engaged in the employment of or who is
28 working under an independent contract, the essence of which is his or
29 her personal labor for an employer under this title, whether by way
30 of manual labor or otherwise, in the course of his or her employment,
31 or as an exception to the definition of worker, a person is not a
32 worker if he or she (~~meets the tests set forth in subsections (1)~~
33 ~~through (6) of RCW 51.08.195 or the separate tests set forth in RCW~~
34 ~~51.08.181 for work performed that requires registration under chapter~~
35 ~~18.27 RCW or licensing under chapter 19.28 RCW~~) is an independent
36 contractor as defined in section 3 of this act: PROVIDED, That a
37 person is not a worker for the purpose of this title, with respect to

1 his or her activities attendant to operating a truck which he or she
2 owns, and which is leased to a common or contract carrier.

3 NEW SECTION. **Sec. 29.** A new section is added to chapter 51.12
4 RCW to read as follows:

5 An employer-employee relationship exists when an individual
6 performs labor or services for an employer. The party asserting that
7 an individual is not an employee must establish by a preponderance of
8 the evidence that the individual is an independent contractor.

9 NEW SECTION. **Sec. 30.** Sections 2 through 10 of this act
10 constitute a new chapter in Title 49 RCW.

11 NEW SECTION. **Sec. 31.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 32.** If any part of this act is found to be in
16 conflict with federal requirements that are a prescribed condition to
17 the allocation of federal funds to the state or the eligibility of
18 employers in this state for federal unemployment tax credits, the
19 conflicting part of this act is inoperative solely to the extent of
20 the conflict, and the finding or determination does not affect the
21 operation of the remainder of this act. Rules adopted under this act
22 must meet federal requirements that are a necessary condition to the
23 receipt of federal funds by the state or the granting of federal
24 unemployment tax credits to employers in this state.

25 NEW SECTION. **Sec. 33.** The following acts or parts of acts are
26 each repealed:

27 (1) RCW 39.12.100 (Independent contractors—Criteria) and 2009 c
28 63 s 1;

29 (2) RCW 50.04.140 (Employment—Exception tests) and 1991 c 246 s 6
30 & 1945 c 35 s 15;

31 (3) RCW 50.04.145 (Employment—Exclusions) and 2008 c 102 s 1,
32 1983 1st ex.s. c 23 s 25, & 1982 1st ex.s. c 18 s 13;

33 (4) RCW 51.08.181 ("Worker"—Registered contractor and electrician
34 exclusions) and 2008 c 102 s 5; and

1 (5) RCW 51.08.195 ("Employer" and "worker"—Additional exception)
2 and 2008 c 102 s 4 & 1991 c 246 s 1.

--- END ---