
SENATE BILL 5527

State of Washington

65th Legislature

2017 Regular Session

By Senators Frockt, Chase, Keiser, Kuderer, and Conway

Read first time 01/27/17. Referred to Committee on Commerce, Labor & Sports.

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; and

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; or

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

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

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

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

1 (E) The individual makes his or her labor or services available
2 to the general public or the business community on a continuing
3 basis;

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

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

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

14 (I) The individual has an active and valid certificate of
15 registration with the department of revenue and an active and valid
16 account with any other state agencies as required by the particular
17 case, for the business the individual is conducting for the payment
18 of all state taxes normally paid by employers and businesses and has
19 registered for and received a unified business identifier number from
20 the state of Washington; and

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

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

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

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

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

34 (ii) Subject to a court order entering final judgment for a
35 violation of this chapter or chapter 39.12, 49.46, 49.48, or 49.52
36 RCW, and the judgment was not satisfied or current within thirty days
37 of the later of: (A) The expiration of the time for appealing the
38 order; or (B) if a timely appeal was made, the date of the final
39 resolution of the appeal; or

1 (iii) Subject to a final and binding citation and notice of
2 assessment from the department for a violation of this chapter or
3 chapter 39.12 or 49.48 RCW, and the citation and penalty was not
4 satisfied or current within thirty days of the date the citation
5 became final and binding.

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

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

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

12 NEW SECTION. **Sec. 4.** (1) An employer-employee relationship
13 exists when an individual performs labor or services for an employer.
14 The party asserting that an individual is not an employee must
15 establish by a preponderance of the evidence that the individual is
16 an independent contractor or is otherwise not an employee under this
17 chapter.

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

23 (a) "General contractor" means the contractor required to be
24 registered under chapter 18.27 RCW or licensed under chapter 19.28
25 RCW whose business operations for a project require the use of more
26 than one building trade or craft upon a single job or project, under
27 a single building permit, and who has responsibility to superintend
28 the project as a whole.

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

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

34 (2) A person may not charge an employee who has been
35 misclassified as an independent contractor a fee, or make any
36 deductions from compensation for any purpose, including for goods,
37 materials, space rental, services, government licenses, repair,
38 equipment maintenance, or fines arising from the employment where any

1 of the acts would have violated the law if the individual had not
2 been misclassified.

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

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

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

11 (b) Pay or collect a fee for use of a foreign or domestic
12 corporation, partnership, limited liability company, or other
13 business entity.

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

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

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

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

32 (b) For a violation of section 5 of this act, order the person to
33 pay a civil penalty of: (i) Not less than one thousand dollars and
34 not more than ten thousand dollars per employee; or (ii) if the
35 person has engaged in a pattern or practice of violations, not less
36 than ten thousand dollars and not more than twenty-five thousand
37 dollars per employee;

38 (c) For a violation of section 5 of this act, order persons,
39 including employers, to jointly and severally pay the following: (i)

1 Three times the amount of wages, salary, and employment benefits
2 denied or withheld, except benefits under Title 50 or 51 RCW; and
3 (ii) reimbursement for taxes and the value of any benefits paid by
4 the employee;

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

9 (e) Determine whether to initiate collection procedures pursuant
10 to RCW 51.16.150 through 51.16.190, and send a copy of its
11 determination, including any supporting documentation, to the
12 employment security department; and

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

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

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

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

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

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

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

32 (ii) Statutory damages for each employee aggrieved by the
33 violation. Statutory damages must not be less than one thousand
34 dollars and not more than ten thousand dollars per employee, unless
35 the person engaged in a pattern or practice of violations, in which
36 case the statutory damages must be not less than ten thousand dollars
37 and not more than twenty-five thousand dollars per employee;

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

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

6 (3) If a court determines that an employer violated section 5 of
7 this act, it may order the employer to pay any taxes owed and award
8 injunctive or other equitable relief, including reinstatement and
9 reclassification of the employee with terms and conditions at least
10 as favorable as those that applied when the employee was
11 misclassified, including rate of compensation, value of any benefits,
12 and hours of work. The court may award front pay in lieu of
13 reinstatement.

14 (4) A civil action under this section must be brought no later
15 than three years after the violation occurred. For the purposes of
16 this section, a violation occurs from the initial date of
17 misclassification and for as long as the employee continues to be
18 misclassified. The three-year period is tolled during any period of
19 time that an employer, any of its agents, or any person acting on
20 behalf of the employer deters an individual from bringing an action
21 under this section.

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

26 "Every worker has the right to be properly classified as an
27 employee rather than an independent contractor if the
28 individual does not meet the requirements of an independent
29 contractor under the law known as the employee fair
30 classification act.

31 If you believe you or someone else has been improperly
32 classified as an independent contractor under the employee
33 fair classification act, you have the right to challenge this
34 classification by filing a complaint with the department of
35 labor and industries or by bringing an action in state
36 court."

37 (2) The notice required by this section must be in English,
38 Spanish, and any other language or languages primarily spoken by the
39 majority of the workforce. The notice must be posted in a conspicuous

1 place in each of the employer's offices in the state and at each job
2 site where a worker classified as an independent contractor performs
3 labor or services.

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

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

14 **PREVAILING WAGE**

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

17 (1) The "prevailing rate of wage," for the intents and purposes
18 of this chapter, shall be the rate of hourly wage, usual benefits,
19 and overtime paid in the locality, as hereinafter defined, to the
20 majority of workers, laborers, or mechanics, in the same trade or
21 occupation. In the event that there is not a majority in the same
22 trade or occupation paid at the same rate, then the average rate of
23 hourly wage and overtime paid to such laborers, workers, or mechanics
24 in the same trade or occupation shall be the prevailing rate. If the
25 wage paid by any contractor or subcontractor to laborers, workers, or
26 mechanics on any public work is based on some period of time other
27 than an hour, the hourly wage for the purposes of this chapter shall
28 be mathematically determined by the number of hours worked in such
29 period of time.

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

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

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

4 (b) The rate of costs to the contractor or subcontractor which
5 may be reasonably anticipated in providing benefits to workers,
6 laborers, and mechanics pursuant to an enforceable commitment to
7 carry out a financially responsible plan or program which was
8 communicated in writing to the workers, laborers, and mechanics
9 affected, for medical or hospital care, pensions on retirement or
10 death, compensation for injuries or illness resulting from
11 occupational activity, or insurance to provide any of the foregoing,
12 for unemployment benefits, life insurance, disability and sickness
13 insurance, or accident insurance, for vacation and holiday pay, for
14 defraying costs of apprenticeship or other similar programs, or for
15 other bona fide fringe benefits, but only where the contractor or
16 subcontractor is not required by other federal, state, or local law
17 to provide any of such benefits.

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

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

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

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

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

33 (iii) Subject to a final and binding citation and notice of
34 assessment from the department of labor and industries for a
35 violation of this chapter or chapter 49.48 RCW, and the citation and
36 penalty was not satisfied or current within thirty days of the date
37 the citation became final and binding.

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

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

6 NEW SECTION. **Sec. 12.** A new section is added to chapter 39.12
7 RCW to read as follows:

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

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

14 (1) Any contractor or subcontractor who files a false statement
15 or fails to file any statement or record required to be filed under
16 this chapter and the rules adopted under this chapter, shall, after a
17 determination to that effect has been issued by the director after
18 hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum
19 of five hundred dollars for each false filing or failure to file, and
20 shall not be permitted to bid, or have a bid considered, on any
21 public works contract until the penalty has been paid in full to the
22 director. The civil penalty under this subsection shall not apply to
23 a violation determined by the director to be an inadvertent filing or
24 reporting error. Civil penalties shall be deposited in the public
25 works administration account.

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

31 (2) If a contractor or subcontractor is found to have (~~violated~~
32 ~~the provisions of subsection (1) of this section for a second time~~
33 ~~within a five year period~~) engaged in a pattern or practice of
34 violations, the contractor or subcontractor shall be subject to the
35 sanctions prescribed in subsection (1) of this section and shall not
36 be allowed to bid on any public works contract for one year. The one
37 year period shall run from the date of notice by the director of the
38 determination of noncompliance. When an appeal is taken from the

1 director's determination, the one year period shall commence from the
2 date of the final determination of the appeal.

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

6 **WAGE DEDUCTIONS**

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

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

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

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

15 (1) An employer-employee relationship exists when an individual
16 performs labor or services for an employer. The party asserting that
17 an individual is not an employee must establish by a preponderance of
18 the evidence that the individual is an independent contractor.

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

25 **WAGE PAYMENT ACT**

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

28 The definitions in this section apply throughout this section and
29 RCW 49.48.083 through 49.48.086:

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

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

33 (3) "Determination of compliance" means a written determination
34 by the department that wage payment requirements have not been
35 violated.

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

3 (5) "Employee" has the meaning provided in: (a) RCW 49.46.010 for
4 purposes of a wage payment requirement set forth in RCW 49.46.020 or
5 49.46.130; and (b) (~~RCW 49.12.005~~) section 3(4) (a) and (b) of this
6 act for purposes of a wage payment requirement set forth in RCW
7 49.48.010, 49.52.050, or 49.52.060.

8 (6) "Employer" (~~(has the meaning provided in RCW 49.46.010 for~~
9 ~~purposes of a wage payment requirement set forth in RCW 49.46.020,~~
10 ~~49.46.130, 49.48.010, 49.52.050, or 49.52.060)~~) and "independent
11 contractor" have the same meanings as in section 3 of this act.

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

15 (8) "Repeat willful violator" means any employer that has been
16 the subject of a final and binding citation and notice of assessment
17 for a willful violation of a wage payment requirement within three
18 years of the date of issue of the most recent citation and notice of
19 assessment for a willful violation of a wage payment requirement.

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

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

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

29 (12) "Wage payment requirement" means a wage payment requirement
30 set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or
31 49.52.060, and any related rules adopted by the department.

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

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

38 (1) An employer-employee relationship exists when an individual
39 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 or is
3 otherwise not an employee under this chapter.

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

10 MINIMUM WAGE ACT

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

13 As used in this chapter:

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

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

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

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

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

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

37 (d) Any individual engaged in the activities of an educational,
38 charitable, religious, state or local governmental body or agency, or

1 nonprofit organization where the employer-employee relationship does
2 not in fact exist or where the services are rendered to such
3 organizations gratuitously. If the individual receives reimbursement
4 in lieu of compensation for normally incurred out-of-pocket expenses
5 or receives a nominal amount of compensation per unit of voluntary
6 service rendered, an employer-employee relationship is deemed not to
7 exist for the purpose of this section or for purposes of membership
8 or qualification in any state, local government, or publicly
9 supported retirement system other than that provided under chapter
10 41.24 RCW;

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

18 (f) Any newspaper vendor, carrier, or delivery person selling or
19 distributing newspapers on the street, to offices, to businesses, or
20 from house to house and any freelance news correspondent or
21 "stringer" who, using his or her own equipment, chooses to submit
22 material for publication for free or a fee when such material is
23 published;

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

26 (h) Any individual engaged in forest protection and fire
27 prevention activities;

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

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

37 (k) Any resident, inmate, or patient of a state, county, or
38 municipal correctional, detention, treatment or rehabilitative
39 institution;

1 (l) Any individual who holds a public elective or appointive
2 office of the state, any county, city, town, municipal corporation or
3 quasi municipal corporation, political subdivision, or any
4 instrumentality thereof, or any employee of the state legislature;

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

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

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

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

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

21 (+5)) "Occupation" means any occupation, service, trade,
22 business, industry, or branch or group of industries or employment or
23 class of employment in which employees are gainfully employed;

24 ((+6)) (5) "Retail or service establishment" means an
25 establishment seventy-five percent of whose annual dollar volume of
26 sales of goods or services, or both, is not for resale and is
27 recognized as retail sales or services in the particular industry;

28 ((+7)) (6) "Wage" means compensation due to an employee by
29 reason of employment, payable in legal tender of the United States or
30 checks on banks convertible into cash on demand at full face value,
31 subject to such deductions, charges, or allowances as may be
32 permitted by rules of the director.

33 NEW SECTION. **Sec. 19.** A new section is added to chapter 49.46
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
37 an individual is not an employee must establish by a preponderance of
38 the evidence that the individual is an independent contractor or is
39 otherwise not an employee under this 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 section, "general contractor" and "subcontractor"
6 have the same meaning as in section 4(2) (a) and (b) of this act.

7 UNEMPLOYMENT INSURANCE

8 NEW SECTION. **Sec. 20.** A new section is added to chapter 50.04
9 RCW to read as follows:

10 The services of an independent contractor, as defined in section
11 3 of this act, are not services in employment under this title.

12 NEW SECTION. **Sec. 21.** A new section is added to chapter 50.04
13 RCW to read as follows:

14 Services performed by an individual for remuneration shall be
15 deemed to be employment subject to this title. The party asserting
16 that personal services are not services in employment must establish
17 by a preponderance of the evidence that the individual is an
18 independent contractor or that the services are otherwise not in
19 employment under this title.

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

22 "Employment," subject only to the other provisions of this title,
23 means personal service, of whatever nature, unlimited by the
24 relationship of master and servant as known to the common law or any
25 other legal relationship, including service in interstate commerce,
26 performed for wages or under any contract calling for the performance
27 of personal services, written or oral, express or implied.

28 (~~Except as provided by RCW 50.04.145,~~) Personal services
29 performed for an employing unit by one or more contractors or
30 subcontractors acting individually or as a partnership, which do not
31 meet the provisions of ((RCW 50.04.140)) section 20 of this act,
32 shall be considered employment of the employing unit: PROVIDED,
33 HOWEVER, That such contractor or subcontractor shall be an employer
34 under the provisions of this title in respect to personal services
35 performed by individuals for such contractor or subcontractor.

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

3 For the purposes of this title:

4 (1) "Professional employer organization" means a person or entity
5 that enters into an agreement with one or more client employers to
6 provide professional employer services. "Professional employer
7 organization" includes entities that use the term "staff leasing
8 company," "permanent leasing company," "registered staff leasing
9 company," "employee leasing company," "administrative employer," or
10 any other name, when they provide professional employer services to
11 client employers. The following are not classified as professional
12 employer organizations: Independent contractors in (~~RCW 50.04.140~~)
13 section 20 of this act; temporary staffing services companies and
14 services referral agencies as defined in RCW 50.04.245; third-party
15 payers as defined in RCW 50.04.248; or labor organizations.

16 (2) "Client employer" means any employer who enters into a
17 professional employer agreement with a professional employer
18 organization.

19 (3) "Coemployer" means either a professional employer
20 organization or a client employer that has entered into a
21 professional employer agreement.

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

24 (5) "Professional employer services" means services provided by
25 the professional employer organization to the client employer, which
26 include, but are not limited to, human resource functions, risk
27 management, or payroll administration services, in a coemployment
28 relationship.

29 (6) "Coemployment relationship" means a relationship that is
30 intended to be ongoing rather than temporary or project-specific,
31 where the rights, duties, and obligations of an employer in an
32 employment relationship are allocated between coemployers pursuant to
33 a professional employer agreement and state law. A coemployment
34 relationship exists only if a majority of the employees performing
35 services to a client employer, or to a division or work unit of a
36 client employer, are covered employees. In determining the allocation
37 of rights and obligations in a coemployment relationship:

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

1 (b) The client employer has those rights and obligations
2 allocated to it by the professional employer agreement or state law,
3 as well as any other right or obligation of an employer that is not
4 specifically allocated by the professional employer agreement or
5 state law.

6 (7) "Professional employer agreement" means a written contract
7 between a client employer and a professional employer organization
8 that provides for: (a) The coemployment of covered employees; and (b)
9 the allocation of employer rights and obligations between the client
10 and the professional employer organization with respect to the
11 covered employees.

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

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

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

29 (2)(a) Each employer shall register with the department and
30 obtain an employment security account number. Each employer shall
31 make periodic reports at such intervals as the commissioner may by
32 regulation prescribe, setting forth the remuneration paid for
33 employment to workers in its employ, the full names and social
34 security numbers of all such workers, and the total hours worked by
35 each worker and such other information as the commissioner may by
36 regulation prescribe.

37 (b) If the employing unit fails or has failed to report the
38 number of hours in a reporting period for which a worker worked, such
39 number will be computed by the commissioner and given the same force

1 and effect as if it had been reported by the employing unit. In
2 computing the number of such hours worked, the total wages for the
3 reporting period, as reported by the employing unit, shall be divided
4 by the dollar amount of the state's minimum wage in effect for such
5 reporting period and the quotient, disregarding any remainder, shall
6 be credited to the worker: PROVIDED, That although the computation so
7 made will not be subject to appeal by the employing unit, monetary
8 entitlement may be redetermined upon request if the department is
9 provided with credible evidence of the actual hours worked. Benefits
10 paid using computed hours are not considered an overpayment and are
11 not subject to collections when the correction of computed hours
12 results in an invalid or reduced claim; however:

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

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

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

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

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

32 (1) An employer that knowingly fails to register with the
33 department and obtain an employment security account number, as
34 required under RCW 50.12.070(2), is subject to a penalty not to
35 exceed one thousand dollars per quarter or two times the taxes due
36 per quarter, whichever is greater. This penalty is in addition to all
37 other penalties and is in addition to higher rates for employers that
38 do not meet the definition of "qualified employer" under RCW
39 50.29.010. This penalty does not apply if the employer can prove that

1 it had good cause to believe that it was not required to register
2 with the department.

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

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

9 (1) At any time after the commissioner shall find that any
10 contributions, interest, or penalties have become delinquent, the
11 commissioner may issue an order and notice of assessment specifying
12 the amount due, which order and notice of assessment shall be served
13 upon the delinquent employer in the manner prescribed for the service
14 of a summons in a civil action, or using a method by which the
15 mailing can be tracked or the delivery can be confirmed. Failure of
16 the employer to receive such notice or order whether served or mailed
17 shall not release the employer from any tax, or any interest or
18 penalties thereon.

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

22 **INDUSTRIAL INSURANCE**

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

25 "Employer" means any person, body of persons, corporate or
26 otherwise, and the legal representatives of a deceased employer, all
27 while engaged in this state in any work covered by the provisions of
28 this title, by way of trade or business, or who contracts with one or
29 more workers, the essence of which is the personal labor of such
30 worker or workers. Or as an exception to the definition of employer,
31 persons or entities are not employers when they contract or agree to
32 remunerate the services performed by an (~~individual who meets the~~
33 ~~tests set forth in subsections (1) through (6) of RCW 51.08.195 or~~
34 ~~the separate tests set forth in RCW 51.08.181 for work performed that~~
35 ~~requires registration under chapter 18.27 RCW or licensing under~~
36 ~~chapter 19.28 RCW)) independent contractor as defined in section 3 of
37 this act.~~

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

3 "Worker" means every person in this state who is engaged in the
4 employment of an employer under this title, whether by way of manual
5 labor or otherwise in the course of his or her employment; also every
6 person in this state who is engaged in the employment of or who is
7 working under an independent contract, the essence of which is his or
8 her personal labor for an employer under this title, whether by way
9 of manual labor or otherwise, in the course of his or her employment,
10 or as an exception to the definition of worker, a person is not a
11 worker if he or she (~~meets the tests set forth in subsections (1)~~
12 ~~through (6) of RCW 51.08.195 or the separate tests set forth in RCW~~
13 ~~51.08.181 for work performed that requires registration under chapter~~
14 ~~18.27 RCW or licensing under chapter 19.28 RCW~~) is an independent
15 contractor as defined in section 3 of this act: PROVIDED, That a
16 person is not a worker for the purpose of this title, with respect to
17 his or her activities attendant to operating a truck which he or she
18 owns, and which is leased to a common or contract carrier.

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

21 An employer-employee relationship exists when an individual
22 performs labor or services for an employer. The party asserting that
23 an individual is not an employee must establish by a preponderance of
24 the evidence that the individual is an independent contractor.

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

27 NEW SECTION. **Sec. 31.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 32.** If any part of this act is found to be in
32 conflict with federal requirements that are a prescribed condition to
33 the allocation of federal funds to the state or the eligibility of
34 employers in this state for federal unemployment tax credits, the
35 conflicting part of this act is inoperative solely to the extent of
36 the conflict, and the finding or determination does not affect the

1 operation of the remainder of this act. Rules adopted under this act
2 must meet federal requirements that are a necessary condition to the
3 receipt of federal funds by the state or the granting of federal
4 unemployment tax credits to employers in this state.

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

7 (1) RCW 39.12.100 (Independent contractors—Criteria) and 2009 c
8 63 s 1;

9 (2) RCW 50.04.140 (Employment—Exception tests) and 1991 c 246 s 6
10 & 1945 c 35 s 15;

11 (3) RCW 50.04.145 (Employment—Exclusions) and 2008 c 102 s 1,
12 1983 1st ex.s. c 23 s 25, & 1982 1st ex.s. c 18 s 13;

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

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

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