
HOUSE BILL 1346

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Manweller, Condotta, Shea, and Warnick

Read first time 01/23/13. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to tipped employee wages and benefits; amending RCW
2 49.46.020; reenacting and amending RCW 49.46.010; adding a new section
3 to chapter 49.46 RCW; creating a new section; providing an effective
4 date; providing an expiration date; and declaring an emergency.

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

6 **Sec. 1.** RCW 49.46.010 and 2011 1st sp.s. c 43 s 462 are each
7 reenacted and amended to read as follows:

8 As used in this chapter:

9 (1) "Average tipped wage rate" means the total amount received by
10 a tipped employee in gratuities for a calendar month divided by the
11 total number of hours worked in that month by the tipped employee;

12 (2) "Director" means the director of labor and industries;

13 ((+2)) (3) "Employ" includes to permit to work;

14 ((+3)) (4) "Employee" includes any individual employed by an
15 employer but shall not include:

16 (a) Any individual (i) employed as a hand harvest laborer and paid
17 on a piece rate basis in an operation which has been, and is generally
18 and customarily recognized as having been, paid on a piece rate basis
19 in the region of employment; (ii) who commutes daily from his or her

1 permanent residence to the farm on which he or she is employed; and
2 (iii) who has been employed in agriculture less than thirteen weeks
3 during the preceding calendar year;

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

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

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

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

31 (f) Any newspaper vendor or carrier;

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

34 (h) Any individual engaged in forest protection and fire prevention
35 activities;

36 (i) Any individual employed by any charitable institution charged
37 with child care responsibilities engaged primarily in the development

1 of character or citizenship or promoting health or physical fitness or
2 providing or sponsoring recreational opportunities or facilities for
3 young people or members of the armed forces of the United States;

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

8 (k) Any resident, inmate, or patient of a state, county, or
9 municipal correctional, detention, treatment or rehabilitative
10 institution;

11 (l) Any individual who holds a public elective or appointive office
12 of the state, any county, city, town, municipal corporation or quasi
13 municipal corporation, political subdivision, or any instrumentality
14 thereof, or any employee of the state legislature;

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

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

19 ~~((+4))~~ (5) "Employer" includes any individual, partnership,
20 association, corporation, business trust, or any person or group of
21 persons acting directly or indirectly in the interest of an employer in
22 relation to an employee;

23 ~~((+5))~~ (6) "Occupation" means any occupation, service, trade,
24 business, industry, or branch or group of industries or employment or
25 class of employment in which employees are gainfully employed;

26 ~~((+6))~~ (7) "Retail or service establishment" means an
27 establishment seventy-five percent of whose annual dollar volume of
28 sales of goods or services, or both, is not for resale and is
29 recognized as retail sales or services in the particular industry;

30 ~~((+7))~~ (8) "Tipped employee" means an employee who regularly and
31 customarily receives gratuities directly from the customer in
32 recognition of the services performed and who is employed by an
33 employer with a standard industry classification code of 58, 70, or 79,
34 or a North American industry classification system code of 713, 721, or
35 722;

36 (9) "Wage" means compensation due to an employee by reason of
37 employment, payable in legal tender of the United States or checks on

1 banks convertible into cash on demand at full face value, subject to
2 such deductions, charges, or allowances as may be permitted by rules of
3 the director.

4 **Sec. 2.** RCW 49.46.020 and 1999 c 1 s 1 are each amended to read as
5 follows:

6 (1) Until January 1, 1999, every employer shall pay to each of his
7 or her employees who has reached the age of eighteen years wages at a
8 rate of not less than four dollars and ninety cents per hour.

9 (2) Beginning January 1, 1999, and until January 1, 2000, every
10 employer shall pay to each of his or her employees who has reached the
11 age of eighteen years wages at a rate of not less than five dollars and
12 seventy cents per hour.

13 (3) Beginning January 1, 2000, and until January 1, 2001, every
14 employer shall pay to each of his or her employees who has reached the
15 age of eighteen years wages at a rate of not less than six dollars and
16 fifty cents per hour.

17 (4)(a) Except as provided under (c) of this subsection, beginning
18 on January 1, 2001, and each following January 1st as set forth under
19 (b) of this subsection, every employer shall pay to each of his or her
20 employees who has reached the age of eighteen years wages at a rate of
21 not less than the amount established under (b) of this subsection.

22 (b) On September 30, 2000, and on each following September 30th,
23 the department of labor and industries shall calculate an adjusted
24 minimum wage rate to maintain employee purchasing power by increasing
25 the current year's minimum wage rate by the rate of inflation. The
26 adjusted minimum wage rate shall be calculated to the nearest cent
27 using the consumer price index for urban wage earners and clerical
28 workers, CPI-W, or a successor index, for the twelve months prior to
29 each September 1st as calculated by the United States department of
30 labor. Each adjusted minimum wage rate calculated under this
31 subsection (4)(b) takes effect on the following January 1st.

32 (c) Beginning July 1, 2013, every employer shall pay to each of his
33 or her tipped employees who has reached the age of eighteen years wages
34 at a rate of not less than seven dollars and twenty-five cents per
35 hour.

36 (5) The director shall by (~~regulation~~) rule establish the minimum
37 wage for employees under the age of eighteen years.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.46 RCW
2 to read as follows:

3 Employers shall determine the average tipped wage rate for each
4 tipped employee for the previous calendar month. If the average tipped
5 wage rate does not equal or exceed the minimum wage rate under RCW
6 49.46.020(4)(a) for any tipped employee, the employer shall pay the
7 tipped employee an amount equal to the number of hours worked for the
8 previous calendar month multiplied by the difference of the minimum
9 wage rate under RCW 49.46.020(4)(a) and the minimum wage rate under RCW
10 49.46.020(4)(c). Employers shall pay the tipped employee this amount
11 at any time during the month subsequent to the month used for the
12 calculation under this section.

13 NEW SECTION. **Sec. 4.** (1)(a) A study group is established to
14 assess the effectiveness of this act. The study group consists of the
15 following members:

16 (i) One member from each of the two largest caucuses of the senate,
17 appointed by the president of the senate;

18 (ii) One member from each of the two largest caucuses of the house
19 of representatives, appointed by the speaker of the house of
20 representatives;

21 (iii) The director of the department of labor and industries or the
22 director's designee;

23 (iv) One member representing the restaurant industry, appointed by
24 the governor; and

25 (v) One member representing labor, appointed by the governor.

26 (b) The director of the department of labor and industries or the
27 director's designee shall convene the initial meeting of the study
28 group and serve as chair of the study group.

29 (2) The study group shall compile a report assessing the
30 effectiveness of this act in enabling restaurateurs to provide adequate
31 wages and benefits for all employees working in restaurants.

32 (3) Staff support for the study group must be provided by the
33 department of labor and industries.

34 (4) Legislative members of the study group must be reimbursed for
35 travel expenses in accordance with RCW 44.04.120. Nonlegislative
36 members, except those representing an employer or organization, are

1 entitled to be reimbursed for travel expenses in accordance with RCW
2 43.03.050 and 43.03.060.

3 (5) The expenses of the study group must be paid by the department
4 of labor and industries. Study group expenditures are subject to
5 approval by the director of the department of labor and industries.

6 (6) The study group shall report its findings and recommendations
7 to the governor and the appropriate committees of the legislature by
8 December 1, 2023.

9 (7) This section expires January 1, 2024.

10 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of the
12 state government and its existing public institutions, and takes effect
13 July 1, 2013.

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