
HOUSE BILL 2334

State of Washington

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2014 Regular Session

By Representatives Riccelli, Sells, Moscoso, Seaquist, Hunt, Green, Appleton, Ryu, Reykdal, Bergquist, Takko, Goodman, Pollet, and Ormsby

Read first time 01/15/14. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to simplifying and enforcing employee status under
2 employment laws to ensure fairness to employers and employees and
3 address the underground economy; amending RCW 39.12.010, 39.12.050,
4 49.46.010, 50.04.100, 50.04.298, 50.12.070, 50.12.072, 50.24.070,
5 50.04.100, 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 to
9 chapter 50.04 RCW; adding a new section to chapter 51.12 RCW; adding a
10 new chapter to Title 49 RCW; creating new sections; repealing RCW
11 39.12.100, 50.04.140, 50.04.145, 51.08.181, and 51.08.195; and
12 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 lost
16 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

1 improve compliance with wage-related laws to help address the problems
2 of the underground economy, level the playing field for honest
3 employers and contractors, and protect workers.

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

6 NEW SECTION. **Sec. 3.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires 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 for
13 an employer. A person may be an employee of two or more employers at
14 the same time.

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

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

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

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

21 (iii) An individual who donates labor to another by his or her own
22 free choice without receiving material or monetary or other value in
23 exchange.

24 (5)(a) "Employer" means any of the following that employ a person:

25 (i) An individual; (ii) any form of business entity, or the receiver,
26 trustee, or successor of a business entity; (iii) an administrator or
27 executor of an estate; or (iv) the state or any agency,
28 instrumentality, or political subdivision of the state. "Employer"
29 includes an individual or entity that acts directly or indirectly in
30 the interest of an employer in relation to employing a person. More
31 than one entity may be the "employer," including in circumstances where
32 one entity controls, is controlled by, or is under common control with
33 another employer, or where one entity exerts control over the
34 operations of another employer.

35 (b) "Employer" does not include agencies, authorities, or

1 instrumentalities of the United States, its possessions and
2 territories, the commonwealth of Puerto Rico, or the District of
3 Columbia.

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

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

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

14 (B) The labor or service is either outside the usual course of
15 business for which the labor or service is performed, or the labor or
16 service is performed outside of all the places of business of the
17 enterprise for which the labor or service is performed; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (iii) Subject to a final and binding citation and notice of
37 assessment from the department for a violation of this chapter or

1 chapter 39.12 or 49.48 RCW, and the citation and penalty was not
2 satisfied or current within thirty days of the date the citation became
3 final and binding.

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

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

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

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

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

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

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

29 NEW SECTION. Sec. 5. (1) An employer may not willfully
30 misclassify an employee as an independent contractor.

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

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

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

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

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

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

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

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

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

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

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

1 Three times the amount of wages, salary, and employment benefits denied
2 or withheld, except benefits under Title 50 or 51 RCW; and (ii)
3 reimbursement for taxes and the value of any benefits paid by the
4 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 to
10 RCW 51.16.150 through 51.16.190, and send a copy of its determination,
11 including any supporting documentation, to the employment security
12 department; and

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

16 (3) An employer may appeal the department's determination pursuant
17 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 created
20 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 herself
23 or on behalf of any other individual who is similarly situated.

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

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

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

31 (ii) Statutory damages for each employee aggrieved by the
32 violation. Statutory damages must not be less than one thousand
33 dollars and not more than ten thousand dollars per employee, unless the
34 person engaged in a pattern or practice of violations, in which case
35 the statutory damages must be not less than ten thousand dollars and
36 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 of
3 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 as
10 favorable as those that applied when the employee was misclassified,
11 including rate of compensation, value of any benefits, and hours of
12 work. The court may award front pay in lieu of reinstatement.

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

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

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

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

34 (2) The notice required by this section must be in English,
35 Spanish, and any other language or languages primarily spoken by the
36 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 account
5 is created in the state treasury. All receipts from civil penalties
6 issued under section 6 of this act must be deposited in the account.
7 Moneys in the account may be spent only after appropriation.
8 Expenditures from the account may be used only for enforcement of this
9 chapter.

10 NEW SECTION. **Sec. 10.** The department may adopt rules to implement
11 this chapter. In addition, the department may develop a plan for
12 strategic enforcement of this chapter, prioritizing industries and
13 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 read
16 as follows:

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

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

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

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

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

21 (6) 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 director
25 of labor and industries or the director's designee.

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

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

34 (1) Any contractor or subcontractor who files a false statement or
35 fails to file any statement or record required to be filed under this
36 chapter and the rules adopted under this chapter, shall, after a

1 determination to that effect has been issued by the director after
2 hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum of
3 five hundred dollars for each false filing or failure to file, and
4 shall not be permitted to bid, or have a bid considered, on any public
5 works contract until the penalty has been paid in full to the director.
6 The civil penalty under this subsection shall not apply to a violation
7 determined by the director to be an inadvertent filing or reporting
8 error. Civil penalties shall be deposited in the public works
9 administration account.

10 To the extent that a contractor or subcontractor has not paid wages
11 at the rate due pursuant to RCW 39.12.020, and a finding to that effect
12 has been made as provided by this subsection, such unpaid wages shall
13 constitute a lien against the bonds and retainage as provided in RCW
14 18.27.040, 19.28.041, 39.08.010, and 60.28.011.

15 (2) If a contractor or subcontractor is found to have violated the
16 provisions of subsection (1) of this section, or of chapter 49.-- RCW
17 (the new chapter created in section 31 of this act), or both, for a
18 second time within a five year period, the contractor or subcontractor
19 shall be subject to the sanctions prescribed in subsection (1) of this
20 section and shall not be allowed to bid on any public works contract
21 for one year. The one year period shall run from the date of notice by
22 the director of the determination of noncompliance. When an appeal is
23 taken from the director's determination, the one year period shall
24 commence from the date of the final determination of the appeal.

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

28 **WAGE DEDUCTIONS**

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

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

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

1 (8) "Repeat willful violator" means any employer that has been the
2 subject of a final and binding citation and notice of assessment for a
3 willful violation of a wage payment requirement within three years of
4 the date of issue of the most recent citation and notice of assessment
5 for a willful violation of a wage payment requirement.

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

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

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

15 (12) "Wage payment requirement" means a wage payment requirement
16 set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or
17 49.52.060, and any related rules adopted by the department.

18 (13) "Willful" means a knowing and intentional action that is
19 neither accidental nor the result of a bona fide dispute, as evaluated
20 under the standards applicable to wage payment violations under RCW
21 49.52.050(2).

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

24 (1) An employer-employee relationship exists when an individual
25 performs labor or services for an employer. The party asserting that
26 an individual is not an employee must establish by a preponderance of
27 the evidence that the individual is an independent contractor or is
28 otherwise not an employee under this chapter.

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

35 **MINIMUM WAGE ACT**

1 **Sec. 18.** RCW 49.46.010 and 2013 c 141 s 1 are each amended to read
2 as follows:

3 As used in this chapter:

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

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

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

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

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

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

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

37 (e) Any individual employed full time by any state or local
38 governmental body or agency who provides voluntary services but only

1 with regard to the provision of the voluntary services. The voluntary
2 services and any compensation therefor shall not affect or add to
3 qualification, entitlement, or benefit rights under any state, local
4 government, or publicly supported retirement system other than that
5 provided under chapter 41.24 RCW;

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

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

13 (h) Any individual engaged in forest protection and fire prevention
14 activities;

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

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

24 (k) Any resident, inmate, or patient of a state, county, or
25 municipal correctional, detention, treatment or rehabilitative
26 institution;

27 (l) Any individual who holds a public elective or appointive office
28 of the state, any county, city, town, municipal corporation or quasi
29 municipal corporation, political subdivision, or any instrumentality
30 thereof, or any employee of the state legislature;

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

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

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

1 ~~(5)~~) "Occupation" means any occupation, service, trade, business,
2 industry, or branch or group of industries or employment or class of
3 employment in which employees are gainfully employed;

4 ~~((6))~~ (5) "Retail or service establishment" means an
5 establishment seventy-five percent of whose annual dollar volume of
6 sales of goods or services, or both, is not for resale and is
7 recognized as retail sales or services in the particular industry;

8 ~~((7))~~ (6) "Wage" means compensation due to an employee by reason
9 of employment, payable in legal tender of the United States or checks
10 on banks convertible into cash on demand at full face value, subject to
11 such deductions, charges, or allowances as may be permitted by rules of
12 the director.

13 NEW SECTION. Sec. 19. A new section is added to chapter 49.46 RCW
14 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 or is
19 otherwise not an employee under this chapter.

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

26 **UNEMPLOYMENT INSURANCE**

27 NEW SECTION. Sec. 20. A new section is added to chapter 50.04 RCW
28 to read as follows:

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

31 NEW SECTION. Sec. 21. A new section is added to chapter 50.04 RCW
32 to read as follows:

33 Services performed by an individual for remuneration shall be
34 deemed to be employment subject to this title. The party asserting

1 that personal services are not services in employment must establish by
2 a preponderance of the evidence that the individual is an independent
3 contractor or that the services are otherwise not in employment under
4 this title.

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

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

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

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

23 For the purposes of this title:

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

1 (2) "Client employer" means any employer who enters into a
2 professional employer agreement with a professional employer
3 organization.

4 (3) "Coemployer" means either a professional employer organization
5 or a client employer that has entered into a professional employer
6 agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (1) At any time after the commissioner shall find that any
36 contributions, interest, or penalties have become delinquent, the

1 commissioner may issue an order and notice of assessment specifying the
2 amount due, which order and notice of assessment shall be served upon
3 the delinquent employer in the manner prescribed for the service of a
4 summons in a civil action, or using a method by which the mailing can
5 be tracked or the delivery can be confirmed. Failure of the employer
6 to receive such notice or order whether served or mailed shall not
7 release the employer from any tax, or any interest or penalties
8 thereon.

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

12 **Sec. 27.** RCW 50.04.100 and 1982 1st ex.s. c 18 s 14 are each
13 amended to read as follows:

14 "Employment," subject only to the other provisions of this title,
15 means personal service, of whatever nature, unlimited by the
16 relationship of master and servant as known to the common law or any
17 other legal relationship, including service in interstate commerce,
18 performed for wages or under any contract calling for the performance
19 of personal services, written or oral, express or implied.

20 (~~Except as provided by RCW 50.04.145,~~) Personal services
21 performed for an employing unit by one or more contractors or
22 subcontractors acting individually or as a partnership, which do not
23 meet the provisions of ((RCW 50.04.140)) section 20 of this act, shall
24 be considered employment of the employing unit: PROVIDED, HOWEVER,
25 That such contractor or subcontractor shall be an employer under the
26 provisions of this title in respect to personal services performed by
27 individuals for such contractor or subcontractor.

28 **INDUSTRIAL INSURANCE**

29 **Sec. 28.** RCW 51.08.070 and 2008 c 102 s 2 are each amended to read
30 as follows:

31 "Employer" means any person, body of persons, corporate or
32 otherwise, and the legal representatives of a deceased employer, all
33 while engaged in this state in any work covered by the provisions of
34 this title, by way of trade or business, or who contracts with one or
35 more workers, the essence of which is the personal labor of such worker

1 or workers. Or as an exception to the definition of employer, persons
2 or entities are not employers when they contract or agree to remunerate
3 the services performed by an (~~individual who meets the tests set forth~~
4 ~~in subsections (1) through (6) of RCW 51.08.195 or the separate tests~~
5 ~~set forth in RCW 51.08.181 for work performed that requires~~
6 ~~registration under chapter 18.27 RCW or licensing under chapter 19.28~~
7 ~~RCW)) independent contractor as defined in section 3 of this act.~~

8 **Sec. 29.** RCW 51.08.180 and 2008 c 102 s 3 are each amended to read
9 as follows:

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

26 NEW SECTION. **Sec. 30.** A new section is added to chapter 51.12 RCW
27 to read as follows:

28 An employer-employee relationship exists when an individual
29 performs labor or services 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 NEW SECTION. **Sec. 31.** Sections 2 through 10 of this act
33 constitute a new chapter in Title 49 RCW.

1 NEW SECTION. **Sec. 32.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 33.** If any part of this act is found to be in
6 conflict with federal requirements that are a prescribed condition to
7 the allocation of federal funds to the state or the eligibility of
8 employers in this state for federal unemployment tax credits, the
9 conflicting part of this act is inoperative solely to the extent of the
10 conflict, and the finding or determination does not affect the
11 operation of the remainder of this act. Rules adopted under this act
12 must meet federal requirements that are a necessary condition to the
13 receipt of federal funds by the state or the granting of federal
14 unemployment tax credits to employers in this state.

15 NEW SECTION. **Sec. 34.** The following acts or parts of acts are
16 each repealed:

17 (1) RCW 39.12.100 (Independent contractors--Criteria) and 2009 c 63
18 s 1;

19 (2) RCW 50.04.140 (Employment--Exception tests) and 1991 c 246 s 6
20 & 1945 c 35 s 15;

21 (3) RCW 50.04.145 (Employment--Exclusions) and 2008 c 102 s 1, 1983
22 1st ex.s. c 23 s 25, & 1982 1st ex.s. c 18 s 13;

23 (4) RCW 51.08.181 ("Worker"--Registered contractor and electrician
24 exclusions) and 2008 c 102 s 5; and

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

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