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**SENATE BILL 5172**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators King, Brown, Fortunato, Honeyford, Muzzall, Schoesler, Short, and Wagoner

AN ACT Relating to the retroactivity of overtime claims in exceptional cases; adding a new section to chapter 49.46 RCW; creating new sections; and declaring an emergency.

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

NEW SECTION. **Sec.**  (1) The legislature recognizes that the numerous cases in Washington state have addressed the application of the prospective and retroactive effect of the courts' decisions. While the courts have established a general rule favoring retroactivity, the legislature finds that the rule imposes an inequitable result in certain exceptional cases.

(2) The legislature intends to limit the retroactive effect of court decisions concerning overtime wage claims by delineating factors that establish inequitable results.

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

(1) When considering whether to award retroactive pay in a cause of action seeking overtime pay under the provisions of RCW 49.46.130 or other provision of law, the court is prohibited from making such an award when the award would create a substantially inequitable result.

(2) An award of retroactive pay creates a substantially inequitable result in causes of action for overtime pay when:

(a) A court announces a new rule or interpretation of law; and

(b) The previous rule or interpretation of law had been:

(i) Expressed in a statute, ordinance, rule, or court decision; or

(ii) Expressed in a reasonable interpretation of such statute, ordinance, rule, or court decision.

NEW SECTION. **Sec.**  Section 2 of this act applies to all causes of action regarding overtime wage claims regardless of when the cause of action may have arisen. To the extent a cause of action has arisen before the effective date of this section, this section applies retroactively, and applies prospectively in all other respects.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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