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**HOUSE BILL 1516**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Representatives Shewmake, Taylor, Valdez, Ramel, Ormsby, and Springer

Read first time 02/10/21. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to agricultural labor; amending RCW 49.46.130;  
2 adding new sections to chapter 49.30 RCW; creating a new section;  
3 providing contingent effective dates; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** It is in the interest of the legislature  
6 to promote human rights and access to a living wage with adequate  
7 worker protections for all workers, including those in agriculture.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.30  
9 RCW to read as follows:

10 (1) The department shall establish an agricultural labor work  
11 group composed of members as specified in subsection (3) of this  
12 section.

13 (2) The work group is charged with formulating policies related  
14 to agricultural labor issues and specifically related to creating  
15 safer working conditions and a living wage for agricultural workers.  
16 The work group must examine state protections for collective  
17 bargaining. The work group's policy on wage issues must address when  
18 paying piece rate, hourly rates, and overtime wages is appropriate  
19 for agricultural workers in specific agricultural industries, taking  
20 into consideration:

1 (a) The seasonal nature of the work in a particular industry;  
2 (b) The tasks workers are required to perform;  
3 (c) The level of risks to human health and safety involved and  
4 other working conditions;  
5 (d) Worker benefits typically offered in the particular industry;  
6 and  
7 (e) Any other factors the work group finds appropriate when  
8 determining appropriate living wages for agricultural workers.

9 (3) (a) The work group consists of the following voting members  
10 appointed by the governor:

11 (i) Four members representing agricultural employers' interests,  
12 one of whom must be an agricultural employer. The members must  
13 include representation of employers from the dairy, tree fruit,  
14 cattle, and wheat industries, all of whom shall be appointed from a  
15 list of at least four names submitted by a recognized statewide  
16 organization of agricultural employers;

17 (ii) Four members representing agricultural workers' interests,  
18 one of whom must be an agricultural worker. The members must include  
19 representation of workers from the dairy, tree fruit, cattle, and  
20 wheat industries, all of whom shall be appointed from a list of at  
21 least four names submitted by a recognized statewide organization of  
22 agricultural workers;

23 (iii) One representative from the agricultural services industry;  
24 and  
25 (iv) One representative from a statewide labor organization.

26 (b) The following members must be included in the work group as  
27 ex officio members:

28 (i) The director of the department or the director's designee;  
29 and  
30 (ii) The director of the department of agriculture or the  
31 director's designee.

32 (c) The work group may invite other state agencies to participate  
33 as ex officio members as needed.

34 (4) The department must convene the work group's first meeting by  
35 September 1, 2021.

36 (5) (a) When the work group reaches an agreement on a policy  
37 determination for appropriate living wages for agricultural workers,  
38 through consensus or majority vote and subject to (b) of this  
39 subsection, the work group's determination must be incorporated into  
40 the department's wage and hour policies and rules.

1 (b) The work group will not be deemed to have reached an  
2 agreement on a policy determination for appropriate living wages for  
3 agricultural wages unless at least 75 percent of the work group's  
4 voting members representing agricultural workers agree to the policy  
5 determination.

6 (c) The work group may use facilitators to assist the work group  
7 in achieving its goals and coming to agreement.

8 (6) The members of the work group shall serve without  
9 compensation, but are entitled to travel expenses as provided in RCW  
10 43.03.050 and 43.03.060.

11 (7) The work group may use personnel and facilities of the  
12 department as needed without charge. The expenses of the work group  
13 shall be paid by the department.

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.30  
15 RCW to read as follows:

16 For causes of action for overtime wage claims filed on or after  
17 November 5, 2020, by agricultural workers in the dairy farm industry,  
18 a court may not award overtime wages retroactively for overtime wages  
19 that were not paid to the workers prior to November 5, 2020.

20 **Sec. 4.** RCW 49.46.130 and 2013 c 207 s 1 are each amended to  
21 read as follows:

22 (1) Except as otherwise provided in this section, no employer  
23 shall employ any of his or her employees for a workweek longer than  
24 forty hours unless such employee receives compensation for his or her  
25 employment in excess of the hours above specified at a rate not less  
26 than one and one-half times the regular rate at which he or she is  
27 employed.

28 (2) This section does not apply to:

29 (a) Any person exempted pursuant to RCW 49.46.010(3). The payment  
30 of compensation or provision of compensatory time off in addition to  
31 a salary shall not be a factor in determining whether a person is  
32 exempted under RCW 49.46.010(3)(c);

33 (b) Employees who request compensating time off in lieu of  
34 overtime pay;

35 (c) Any individual employed as a seaman whether or not the seaman  
36 is employed on a vessel other than an American vessel;

37 (d) Seasonal employees who are employed at concessions and  
38 recreational establishments at agricultural fairs, including those

1 seasonal employees employed by agricultural fairs, within the state  
2 provided that the period of employment for any seasonal employee at  
3 any or all agricultural fairs does not exceed fourteen working days a  
4 year;

5 (e) Any individual employed as a motion picture projectionist if  
6 that employee is covered by a contract or collective bargaining  
7 agreement which regulates hours of work and overtime pay;

8 (f) An individual employed as a truck or bus driver who is  
9 subject to the provisions of the Federal Motor Carrier Act (49 U.S.C.  
10 Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the  
11 compensation system under which the truck or bus driver is paid  
12 includes overtime pay, reasonably equivalent to that required by this  
13 subsection, for working longer than forty hours per week;

14 ~~(g) ((Any individual employed (i) on a farm, in the employ of any  
15 person, in connection with the cultivation of the soil, or in  
16 connection with raising or harvesting any agricultural or  
17 horticultural commodity, including raising, shearing, feeding, caring  
18 for, training, and management of livestock, bees, poultry, and  
19 furbearing animals and wildlife, or in the employ of the owner or  
20 tenant or other operator of a farm in connection with the operation,  
21 management, conservation, improvement, or maintenance of such farm  
22 and its tools and equipment; or (ii) in packing, packaging, grading,  
23 storing or delivering to storage, or to market or to a carrier for  
24 transportation to market, any agricultural or horticultural  
25 commodity; or (iii) commercial canning, commercial freezing, or any  
26 other commercial processing, or with respect to services performed in  
27 connection with the cultivation, raising, harvesting, and processing  
28 of oysters or in connection with any agricultural or horticultural  
29 commodity after its delivery to a terminal market for distribution  
30 for consumption;~~

31 ~~(h))~~ Any industry in which federal law provides for an overtime  
32 payment based on a workweek other than forty hours. However, the  
33 provisions of the federal law regarding overtime payment based on a  
34 workweek other than forty hours shall nevertheless apply to employees  
35 covered by this section without regard to the existence of actual  
36 federal jurisdiction over the industrial activity of the particular  
37 employer within this state. For the purposes of this subsection,  
38 "industry" means a trade, business, industry, or other activity, or  
39 branch, or group thereof, in which individuals are gainfully employed

1 (section 3(h) of the Fair Labor Standards Act of 1938, as amended  
2 (Public Law 93-259));

3 (~~(i)~~) (h) Any hours worked by an employee of a carrier by air  
4 subject to the provisions of subchapter II of the Railway Labor Act  
5 (45 U.S.C. Sec. 181 et seq.), when such hours are voluntarily worked  
6 by the employee pursuant to a shift-trading practice under which the  
7 employee has the opportunity in the same or in other workweeks to  
8 reduce hours worked by voluntarily offering a shift for trade or  
9 reassignment; and

10 (~~(j)~~) (i) Any individual licensed under chapter 18.85 RCW  
11 unless the individual is providing real estate brokerage services  
12 under a written contract with a real estate firm which provides that  
13 the individual is an employee. For purposes of this subsection (2)  
14 (~~(j)~~) (i), "real estate brokerage services" and "real estate firm"  
15 mean the same as defined in RCW 18.85.011.

16 (3) No employer shall be deemed to have violated subsection (1)  
17 of this section by employing any employee of a retail or service  
18 establishment for a workweek in excess of the applicable workweek  
19 specified in subsection (1) of this section if:

20 (a) The regular rate of pay of the employee is in excess of one  
21 and one-half times the minimum hourly rate required under RCW  
22 49.46.020; and

23 (b) More than half of the employee's compensation for a  
24 representative period, of not less than one month, represents  
25 commissions on goods or services.

26 In determining the proportion of compensation representing  
27 commissions, all earnings resulting from the application of a bona  
28 fide commission rate is to be deemed commissions on goods or services  
29 without regard to whether the computed commissions exceed the draw or  
30 guarantee.

31 (4) No employer of commissioned salespeople primarily engaged in  
32 the business of selling automobiles, trucks, recreational vessels,  
33 recreational vessel trailers, recreational vehicle trailers,  
34 recreational campers, manufactured housing, or farm implements to  
35 ultimate purchasers shall violate subsection (1) of this section with  
36 respect to such commissioned salespeople if the commissioned  
37 salespeople are paid the greater of:

38 (a) Compensation at the hourly rate, which may not be less than  
39 the rate required under RCW 49.46.020, for each hour worked up to

1 forty hours per week, and compensation of one and one-half times that  
2 hourly rate for all hours worked over forty hours in one week; or

3 (b) A straight commission, a salary plus commission, or a salary  
4 plus bonus applied to gross salary.

5 (5) No public agency shall be deemed to have violated subsection  
6 (1) of this section with respect to the employment of any employee in  
7 fire protection activities or any employee in law enforcement  
8 activities (including security personnel in correctional  
9 institutions) if: (a) In a work period of twenty-eight consecutive  
10 days the employee receives for tours of duty which in the aggregate  
11 exceed two hundred forty hours; or (b) in the case of such an  
12 employee to whom a work period of at least seven but less than  
13 twenty-eight days applies, in his or her work period the employee  
14 receives for tours of duty which in the aggregate exceed a number of  
15 hours which bears the same ratio to the number of consecutive days in  
16 his or her work period as two hundred forty hours bears to twenty-  
17 eight days; compensation at a rate not less than one and one-half  
18 times the regular rate at which he or she is employed.

19 NEW SECTION. **Sec. 5.** (1) Section 3 of this act takes effect  
20 only if the work group specified in section 2 of this act reaches an  
21 agreement on a policy determination for appropriate living wages for  
22 agricultural workers by July 1, 2024.

23 (2) Section 4 of this act takes effect only if the work group  
24 specified in section 2 of this act fails to reach an agreement on a  
25 policy determination for appropriate living wages for agricultural  
26 workers by July 1, 2024.

27 (3) The office of the governor must provide written notice of the  
28 effective date of sections 3 and 4 of this act to affected parties,  
29 the chief clerk of the house of representatives, the secretary of the  
30 senate, the office of the code reviser, and others as deemed  
31 appropriate by the office of the governor.

32 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
33 preservation of the public peace, health, or safety, or support of  
34 the state government and its existing public institutions, and takes  
35 effect immediately.

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