

# HOUSE BILL REPORT

## ESSB 5264

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**As Reported by House Committee On:**  
Commerce & Labor  
Appropriations

**Title:** An act relating to unfair practices by public employers with respect to eligibility for employment-based benefits.

**Brief Description:** Prohibiting public employers from misclassifying employees to avoid providing benefits.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Prentice, Fraser, Patterson, Costa, Shin, Kline, Kohl-Welles, Constantine, Jacobsen, Winsley and Gardner).

**Brief History:**

**Committee Activity:**

Commerce & Labor: 2/20/02, 2/26/02 [DPA];

Appropriations: 3/2/02, 3/4/02 [DPA(CL)].

**Brief Summary of Engrossed Substitute Bill**  
**(As Amended by House Committee)**

- Makes it an unfair practice for a public employer to misclassify an employee to avoid providing employment-based benefits.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass as amended. Signed by 6 members: Representatives Conway, Chair; Wood, Vice Chair; Clements, Ranking Minority Member; Kenney, Lysen and McMorris.

**Minority Report:** Do not pass. Signed by 1 member: Representative Chandler.

**Staff:** Jill Reinmuth (786-7134).

**Background:**

Eligibility for employment-based benefits is generally based on: (1) the existence of an

employment relationship between a person and a public entity; and (2) the nature of that relationship. In general, if an employment relationship does not exist, the person is not eligible for employment-based benefits. If the employment relationship is part-time or temporary, the person also may not be eligible for benefits.

Various legal tests have been developed to determine whether or not an employment relationship exists. For example, the federal Internal Revenue Services uses a 20-part test to determine whether a person is an employee or an independent contractor. State agencies such as the Department of Retirement Systems, the Health Care Authority, the Employment Security Department, and the Department of Labor and Industries also use multi-factor tests to determine whether an employment relationship exists.

In the past decade, some public entities have been sued by persons alleging that the public entities misclassified their employment relationships, and thus, did not give them employment-based benefits to which they were entitled. Cases involving King County, the city of Bellevue, and the city of Seattle have been settled. These public entities have agreed to pay the plaintiffs past compensation and future benefits totaling more than \$60 million. A case involving the State Board for Community and Technical Colleges and the Health Care Authority is still pending.

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### **Summary of Amended Bill:**

It is an unfair practice for a public employer to:

- Misclassify an employee to avoid providing or continuing to provide employment-based benefits; or
- include language in a contract with an employee that requires the employee to forego employment-based benefits.

If an employee believes he or she has been harmed by such an unfair practice, the employee may bring a civil action in a court of competent jurisdiction.

A "public employer" is a state or local government employer.

An "employee" is a person who provides services for compensation to an employer, but is not an independent contractor.

"Employment-based benefits" mean benefits to which an employee may become or is entitled under state law or employer policies or collective bargaining agreements applicable to the employee's correct classification.

"Misclassify" means to classify incorrectly a long-term public employee as temporary, leased, contract, seasonal, intermittent, or part-time.

**Amended Bill Compared to Engrossed Substitute Bill:**

The definition of "employment-based benefits" is amended to reference benefits to which employees are entitled under collective bargaining agreements. The effects of the bill are clarified as to: (1) The authority of public employers to provide or not to provide employment-based benefits; and (2) any statutes or policies on postretirement employment. The provisions authorizing administrative review by the Department of Retirement Systems are deleted.

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**Appropriation:** None.

**Fiscal Note:** Available for ESSB 5264, but not for the striking amendment.

**Effective Date of Amended Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The striking amendment clarifies that the Legislature's intent is not to require state and local governments to provide benefits to persons who are not entitled to receive benefits. Persons who are misclassified are treated as second class workers. They are denied benefits such as: paid vacation and sick leave; medical, dental, and vision insurance; retirement system participation; deferred compensation; and bus passes. Although case law has provided the basis for litigation, statutory law would be clearer. Action is needed to restore fairness and dignity to public employment.

The striking amendment needs to ensure that the university has flexibility to offer employment to students. It also needs to refer to collective bargaining agreements as a means by which employees may be entitled benefits, and address public employee retirees who are hired for postretirement employment.

**Testimony Against:** None.

**Testified:** (In support) David West, Robert Bell, and Susan Coles, Center for a Changing Workforce.

(Concerns) Jane Yung Dennie, Washington State University; and Jim Justin, Association of Washington Cities.

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**HOUSE COMMITTEE ON APPROPRIATIONS**

**Majority Report:** Do pass as amended by Committee on Commerce & Labor. Signed by 16 members: Representatives Sommers, Chair; Doumit, 1st Vice Chair; Fromhold, 2nd Vice Chair; Clements, Cody, Cox, Dunshee, Grant, Kagi, Kenney, Kessler, Linville, McIntire, Ruderman, Schual-Berke and Tokuda.

**Minority Report:** Without recommendation. Signed by 9 members: Representatives Sehlin, Ranking Minority Member; Alexander, Boldt, Buck, Lisk, Mastin, Pearson, Pflug and Talcott.

**Staff:** Andrea Hardy (786-7349).

**Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Commerce & Labor:**

No new changes were recommended.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** While most public employers do not misclassify their employees, there is a need to have a statute forbidding these misclassifications. It is important to instill accountability to taxpayers. The people should know how many public employees there are. This is a good bill, and had bipartisan support in both the Senate and the House Commerce and Labor Committees.

**Testimony Against:** None.

**Testified:** Lynn McKinnon, Washington Public Employees Association; and David West, Center for a Changing Workforce.