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HOUSE BILL 2812

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State of Washington

65th Legislature

2018 Regular Session

By Representatives Stonier, Sells, and Pollet

Read first time 01/17/18. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to determinations of worker benefits and employer  
2 obligations based on a worker's status; amending RCW 39.12.010,  
3 39.12.050, 49.46.010, 49.46.010, 50.04.100, 50.04.298, 50.12.070,  
4 50.12.072, 50.24.070, 51.08.070, and 51.08.180; reenacting and  
5 amending RCW 49.48.082; adding a new section to chapter 39.12 RCW;  
6 adding new sections to chapter 49.52 RCW; adding a new section to  
7 chapter 49.48 RCW; adding a new section to chapter 49.46 RCW; adding  
8 new sections to chapter 50.04 RCW; adding a new section to chapter  
9 51.12 RCW; adding new chapters to Title 49 RCW; creating new  
10 sections; repealing RCW 39.12.100, 50.04.140, 50.04.145, 51.08.181,  
11 and 51.08.195; prescribing penalties; providing an effective date;  
12 and providing an expiration date.

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

14 **WORKER BENEFITS**

15 NEW SECTION. **Sec. 1.** The legislature finds that:

16 (1) In Washington and across our nation, the basic social safety  
17 net is intrinsically connected and derived from employment. However,  
18 as our economy has changed, the social contract that full-time work  
19 led to basic financial security, retirement benefits, and the ability  
20 to provide for one's family, is no longer true for too many people.

1 Additionally, our economy continues to adapt and the circumstances of  
2 how and where work is performed, as well as the relationships of  
3 those benefiting from work, look very different than fifty years ago.  
4 As our communities and economies evolve, there emerge credible and  
5 constructive rationales for alternative pathways for performing work,  
6 other than the traditional employment model based on hours in a day  
7 and shifts in a week construct. However, current economic systems and  
8 regulatory frameworks have created an incentive structure that  
9 encourages companies to forego social responsibilities to their  
10 communities and those performing work for them, by classifying their  
11 workers as independent contractors rather than genuine employees. The  
12 financial incentives for classifying or misclassifying workers as  
13 independent contractors are compelling to even the most scrupulous of  
14 employers. Further, those workers that desire the flexibility and  
15 autonomy of a traditional employment model have no access to the  
16 legal protections, rights, and benefits of a traditional employee.

17 (2) Washington is uniquely positioned to address this urgent  
18 deficiency of our labor market. The nimble and innovative nature of  
19 our economy, coupled with our state's commitment to strong  
20 communities provides the expertise and capacity to set the standard  
21 nationwide for this century's social compact between an economy and  
22 the people that it serves. Therefore, to provide Washington  
23 businesses the necessary legal clarity they require to thrive as  
24 companies and employers, and ensure a basic social safety net is  
25 available to all workers, regardless of worker status, the  
26 legislature shall further clarify the definition of "employee" in  
27 Washington state and provide a regulatory and benefits structure for  
28 nonemployee workers.

29 NEW SECTION. **Sec. 2.** The definitions in this section apply  
30 throughout this chapter unless the context clearly requires  
31 otherwise.

32 (1) "Benefit provider" means a nonprofit entity that is eligible  
33 to provide benefits to worker beneficiaries under section 4 of this  
34 act.

35 (2) "Contributing agent" means a business, organization,  
36 corporation, limited liability company, partnership, sole proprietor,  
37 or any other business entity that:

1 (a) Facilitates the provision of services by workers to consumers  
2 seeking the services and where the provision of services by workers  
3 is taxed under 1099 federal tax status; or

4 (b) Is a single person business that does not employ any  
5 employees and that chooses to opt into a program with a benefit  
6 provider for benefits under this chapter.

7 (3) "Department" means the department of labor and industries.

8 (4) "Worker beneficiary" means a person who receives benefits  
9 from a benefit provider under this chapter.

10 NEW SECTION. **Sec. 3.** (1) Contributing agents must contribute  
11 funds to benefit providers for the purpose of providing benefits to  
12 worker beneficiaries. The requirement to contribute funds under this  
13 chapter only applies when the worker beneficiary for whom the  
14 contributing agent is making a contribution provides his or her  
15 services in the state.

16 (2)(a) For the purposes of contributions to pay premiums for  
17 industrial insurance, the department must determine the contribution  
18 amount for each risk classification providing services under this  
19 act. Contributing agents must collect all premiums necessary to  
20 provide coverage for the worker beneficiary based on the rates set by  
21 the department, and must remit the amounts to the department.  
22 Contributions must be assessed for every hour, or production unit in  
23 the cases of piece work, that the worker beneficiary provided  
24 services to the contributing agent. If the contributing agent is a  
25 single person business, the contribution amount must be the amount as  
26 determined by the department.

27 (b) In addition to the contribution amount described in (a) of  
28 this subsection, contributing agents must also contribute an amount  
29 equal to the lesser of fifteen percent of the total fee collected  
30 from the consumer for each transaction of services provided or two  
31 dollars for every hour that the worker provided services to the  
32 consumer. If determined per hour, then the determination must be  
33 prorated per minute.

34 (3) Contributions must be made to the benefit provider on no less  
35 than a monthly basis and no later than fifteen days after the end of  
36 the month in which the worker beneficiary services were provided.

37 NEW SECTION. **Sec. 4.** (1)(a) Based on the contributions received  
38 under section 3 of this act, benefit providers must ensure that

1 benefits are provided to worker beneficiaries as set forth in this  
2 section.

3 (b) The benefits earned by the worker beneficiary under this  
4 section belong to the worker beneficiary and the worker beneficiary  
5 may accrue benefits based on contributions from more than one  
6 contributing agent.

7 (2) Benefit providers must provide industrial insurance under  
8 Title 51 RCW to those worker beneficiaries entitled to benefits based  
9 on contributions made under this chapter.

10 (3) In addition to industrial insurance, benefit providers must  
11 provide some or all of the benefits set forth in this subsection.  
12 Benefit providers must solicit input from worker beneficiaries  
13 regarding which benefits to provide. Benefit providers must allow  
14 worker beneficiaries to choose from available benefits or allocate  
15 the contributions among the following benefits:

16 (a) Health insurance, including but not limited to subsidies to  
17 purchase health insurance on the Washington health benefit exchange;

18 (b) Paid time off;

19 (c) Retirement benefits; and

20 (d) Other benefits determined by the benefit providers.

21 (4) Benefit providers may also offer other benefits or services  
22 to worker beneficiaries including, but not limited to, tax  
23 assistance, emergency loans, and other benefits that fit the needs of  
24 specific industry or worker beneficiary groups.

25 (5) Benefit providers may advocate on behalf of the worker  
26 beneficiaries regarding benefits.

27 (6) Benefit providers may use up to ten percent of contribution  
28 funds received for administration of benefits.

29 NEW SECTION. **Sec. 5.** The department shall adopt rules for  
30 organizations to become benefit providers. At a minimum, the rules  
31 governing benefit providers must require that the following criteria  
32 are met:

33 (1) The benefit provider must be an organization that is a  
34 nonprofit organization, operating under 26 U.S.C. Sec. 501(c)(3)  
35 federal tax status;

36 (2) At least one-half of the organization's board of directors  
37 must be comprised of worker beneficiaries performing work for  
38 contributing agents or representatives of bona fide independent  
39 organizations of such workers;

1 (3) The organization must be independent from all business  
2 entities, organizations, corporations, or individuals that would  
3 pursue any financial interest in conflict with that of the worker  
4 beneficiaries;

5 (4) All actions of the organization regarding providing benefits  
6 must be for the sole purpose of maximizing benefits to worker  
7 beneficiaries;

8 (5) The board of directors of the organization must hold a  
9 fiduciary duty to the worker beneficiaries with respect to the  
10 provision of benefits; and

11 (6) The organization must demonstrate adequate viability and  
12 financial sufficiency as determined by the department. At a minimum,  
13 the organization must have:

14 (a) Cash reserves in a sufficient amount, as determined by the  
15 department;

16 (b) Liability coverage for an amount determined by the  
17 department;

18 (c) Access to bonding; and

19 (d) Other demonstrated competencies as determined by the  
20 department.

21 NEW SECTION. **Sec. 6.** A worker beneficiary entitled to benefits  
22 under this chapter must select a benefit provider and must be given  
23 the option to change his or her selected benefit provider once per  
24 year. Worker beneficiaries must be provided information regarding  
25 available benefit providers and must be able to easily select their  
26 chosen benefit provider.

27 NEW SECTION. **Sec. 7.** The department must adopt rules to  
28 implement and administer this chapter, including rules for:

29 (1) Monitoring compliance of contributing agents;

30 (2) Monitoring benefit providers, including the ability to remove  
31 benefit providers that are out of compliance with the criteria  
32 established under this chapter;

33 (3) Establishing a fee on contributing agents to fund the  
34 department's compliance efforts;

35 (4) Administering industrial insurance coverage for worker  
36 beneficiaries under this chapter; and

1 (5) Providing procedures for worker beneficiaries to select  
2 benefit providers, to change their selections annually, and to  
3 receive notices of the right to select different benefit providers.

4 NEW SECTION. **Sec. 8.** In addition to any remedies provided by  
5 the department to a worker beneficiary for a contributing agent's  
6 noncompliance, a worker beneficiary may bring a private cause of  
7 action against a contributing agent for the contributing agent's  
8 failure to comply with the contribution requirements under this  
9 chapter.

10 NEW SECTION. **Sec. 9.** The requirements on contributing agents  
11 and the benefits provided to worker beneficiaries under this chapter  
12 may not be considered in determinations of a worker beneficiary's  
13 employment status or the contributing agent's employment relationship  
14 to the worker beneficiary under chapters 51.08, 49.12, 49.46, and  
15 49.48 RCW or under Title 50 RCW.

16 NEW SECTION. **Sec. 10.** All contributing agents must submit  
17 annual reports to the department disclosing the following  
18 information:

19 (1) Data about the contributing agent that includes:

20 (a) The total number of worker beneficiaries used by the  
21 contributing agent in the calendar year;

22 (b) The number of worker beneficiaries who have completed more  
23 than thirty tasks, shifts, or trips with the contributing agent  
24 during the calendar year;

25 (c) If the contributing agent sells worker beneficiary  
26 information to third parties, a disclosure of all third-party  
27 recipients of individualized or aggregate worker beneficiary data;

28 (d) Reports from worker beneficiaries of sexual harassment or  
29 other forms of abuse experienced during the worker beneficiary  
30 performing tasks, trips, shifts, or services and the contributing  
31 agent's response to the reports;

32 (e) Basic consumer data including total registered users, new  
33 users, and user zip codes;

34 (f) Total moneys collected annually from consumers; and

35 (g) Total moneys disbursed annually to worker beneficiaries;

36 (2) Data about worker beneficiaries that include:

1 (a) Any known demographic data of the worker beneficiaries,  
2 including but not limited to gender, race, and primary language  
3 spoken at home;

4 (b) Average hours per week performed by average worker  
5 beneficiary, including the average number of tasks, trips, or shifts  
6 offered to the worker beneficiary annually;

7 (c) Policies outlining the ability of a worker beneficiary to  
8 decline or alter the task, trip, or shift offered;

9 (d) Average number of months since worker beneficiaries began  
10 work with the company;

11 (e) Average number of months for worker beneficiaries to complete  
12 at least five tasks, shifts, or trips;

13 (f) The zip codes in which worker beneficiaries primarily  
14 complete tasks, shifts, or trips;

15 (g) The twenty-fifth, fiftieth, and seventy-fifth percentile  
16 worker beneficiary payouts per job, per week, and per year;

17 (h) The number of worker beneficiaries who are actively providing  
18 services each calendar month and over the course of the year;

19 (i) The median time or miles, or both, while a worker beneficiary  
20 is active on the contributing agent's app and the time and/or miles  
21 the worker beneficiary is being paid while on the app; and

22 (j) The number of worker beneficiaries terminated from the app;  
23 and

24 (3) Data regarding rates, including:

25 (a) Average rate per task, trip, or hour, and what that equates  
26 to as an hourly wage in total, and as a per hour rate based on the  
27 total amount and the time spent providing services;

28 (b) Whether rates are set by the contributing agent or the worker  
29 beneficiary;

30 (c) If variable or surge pricing is used, the average hourly rate  
31 per task, trip, or hour for the highest top ten percent of rates and  
32 the lowest ten percent of rates;

33 (d) The average tips per pay period or per task, trip, or hour;  
34 and

35 (e) Any benefits or protections, including industrial insurance,  
36 auto insurance, and expense reimbursement provided to worker  
37 beneficiaries.

38 NEW SECTION. **Sec. 11.** (1) The department must conduct a survey  
39 of at least three hundred worker beneficiaries identifying as

1 providing service to contributing agents. The survey must seek data  
2 on the worker beneficiary's total household income, whether the  
3 worker beneficiary receives benefits from other employment sources,  
4 and whether the worker beneficiary classifies his or her work as  
5 primary or supplemental employment.

6 (2) The department must submit a report summarizing the survey to  
7 the appropriate committees of the legislature by December 31, 2018.

8 (3) Contributing agents that use both employees and worker  
9 beneficiaries must submit to the department in quarterly reports, the  
10 number of worker beneficiaries used in the reporting period if more  
11 than twenty-five worker beneficiaries were used in the reporting  
12 period.

13 **EMPLOYER FAIR CLASSIFICATION**

14 NEW SECTION. **Sec. 12.** The legislature finds that underground  
15 economic activity in this state results in millions of dollars of  
16 lost 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  
20 improve compliance with wage-related laws to help address the  
21 problems of the underground economy, level the playing field for  
22 honest employers and contractors, and protect workers.

23 NEW SECTION. **Sec. 13.** This chapter may be known and cited as  
24 the employee fair classification act.

25 NEW SECTION. **Sec. 14.** The definitions in this section apply  
26 throughout this chapter unless the context clearly requires  
27 otherwise.

- 28 (1) "Department" means the department of labor and industries.
- 29 (2) "Director" means the director of the department of labor and  
30 industries.
- 31 (3) "Employ" means to suffer or permit to work.
- 32 (4)(a) "Employee" means a person who performs labor or services  
33 for an employer. A person may be an employee of two or more employers  
34 at the same time.
- 35 (b) "Employee" does not include an independent contractor.
- 36 (c) "Employee" also does not include:



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

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

5 (iii) An individual who performs services for an educational,  
6 charitable, religious, government, or nonprofit organization and who  
7 offers his or her services freely and without pressure or coercion,  
8 direct or implied, and without any contemplation or expectation of  
9 payment. An individual who receives reimbursement for actual expenses  
10 or who receives maintenance, which includes costs for meals and  
11 transient lodging incurred while performing volunteer duties, does  
12 not lose his or her status as a nonemployee.

13 (5)(a) "Employer" means any of the following that employ a  
14 person: (i) An individual; (ii) any form of business entity, or the  
15 receiver, trustee, or successor of a business entity; (iii) an  
16 administrator or executor of an estate; or (iv) the state or any  
17 agency, instrumentality, or political subdivision of the state.  
18 "Employer" includes an individual or entity that acts directly or  
19 indirectly in the interest of an employer in relation to employing a  
20 person. More than one entity may be the "employer," including in  
21 circumstances where one entity controls, is controlled by, or is  
22 under common control with another employer, or where one entity  
23 exerts control over the operations of another employer.

24 (b) "Employer" does not include agencies, authorities, or  
25 instrumentalities of the United States, its possessions and  
26 territories, the commonwealth of Puerto Rico, or the District of  
27 Columbia.

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

30 (7)(a) "Independent contractor" means an individual who performs  
31 labor or services for a party when all of the following elements are  
32 established:

33 (i) The individual is and will continue to be free from control  
34 or direction over the performance of the labor or services by the  
35 party for whom the labor or services are performed, both under the  
36 contract of labor or service and in fact. Control or direction  
37 includes the right to control or direct as well as general control or  
38 direction over the individual's physical activities;

39 (ii) The labor or service is outside the usual course of business  
40 for which the labor or service is performed; and

1 (iii) The individual is customarily engaged in an independently  
2 established trade, occupation, business, or profession of the same  
3 nature as that involved in the contract of labor or service, for  
4 which the individual independently establishes the price of the  
5 individual's labor or service.

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

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

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

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

16 (ii) Subject to a court order entering final judgment for a  
17 violation of this chapter or chapter 39.12, 49.46, 49.48, or 49.52  
18 RCW, and the judgment was not satisfied or current within thirty days  
19 of the later of: (A) The expiration of the time for appealing the  
20 order; or (B) if a timely appeal was made, the date of the final  
21 resolution of the appeal; or

22 (iii) Subject to a final and binding citation and notice of  
23 assessment from the department for a violation of this chapter or  
24 chapter 39.12 or 49.48 RCW, and the citation and penalty was not  
25 satisfied or current within thirty days of the date the citation  
26 became final and binding.

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

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

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

33 NEW SECTION. **Sec. 15.** (1) An employer-employee relationship  
34 exists when an individual performs labor or services for an employer.  
35 The party asserting that an individual is not an employee must  
36 establish by a preponderance of the evidence that the individual is  
37 an independent contractor or is otherwise not an employee under this  
38 chapter.

1 (2) A general contractor is not responsible for violations of an  
2 independent contractor or subcontractor under this chapter unless the  
3 general contractor exerts substantial control over the day-to-day  
4 work of the independent contractor or subcontractor. For purposes of  
5 this subsection:

6 (a) "General contractor" means the contractor required to be  
7 registered under chapter 18.27 RCW or licensed under chapter 19.28  
8 RCW whose business operations for a project require the use of more  
9 than one building trade or craft upon a single job or project, under  
10 a single building permit, and who has responsibility to superintend  
11 the project as a whole.

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

15 NEW SECTION. **Sec. 16.** (1) An employer may not willfully  
16 misclassify an employee as an independent contractor.

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

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

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

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

32 (b) Pay or collect a fee for use of a foreign or domestic  
33 corporation, partnership, limited liability company, or other  
34 business entity.

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

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

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

13        (a) For a violation of section 19 of this act, order the employer  
14 to pay a civil penalty of not less than one thousand dollars and not  
15 more than ten thousand dollars;

16        (b) For a violation of section 16 of this act, order the person  
17 to pay a civil penalty of: (i) Not less than one thousand dollars and  
18 not more than ten thousand dollars per employee; or (ii) if the  
19 person has engaged in a pattern or practice of violations, not less  
20 than ten thousand dollars and not more than twenty-five thousand  
21 dollars per employee;

22        (c) For a violation of section 16 of this act, order persons,  
23 including employers, to jointly and severally pay the following: (i)  
24 Three times the amount of wages, salary, and employment benefits  
25 denied or withheld, except benefits under Title 50 or 51 RCW; and  
26 (ii) reimbursement for taxes and the value of any benefits paid by  
27 the employee;

28        (d) In addition, for a violation of section 16 of this act, order  
29 the employer to pay any taxes owed, reinstate the employee, and  
30 properly classify the employee. The director may award front pay in  
31 lieu of reinstatement;

32        (e) Determine whether to initiate collection procedures pursuant  
33 to RCW 51.16.150 through 51.16.190, and send a copy of its  
34 determination, including any supporting documentation, to the  
35 employment security department; and

36        (f) The department must consider referrals based on a court  
37 finding of a violation of section 16 of this act to determine whether  
38 to initiate collection procedures.

39        (3) An employer may appeal the department's determination  
40 pursuant to RCW 49.48.084.

1 (4) The department must deposit civil penalties collected under  
2 this chapter into the employee fair classification act account  
3 created in section 20 of this act.

4 NEW SECTION. **Sec. 18.** (1) An individual aggrieved by a  
5 violation of section 16 of this act may bring suit on behalf of  
6 himself or herself or on behalf of any other individual who is  
7 similarly situated.

8 (2) If a court determines that a person or persons, including  
9 employers, violated section 16 of this act, it:

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

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

15 (ii) Statutory damages for each employee aggrieved by the  
16 violation. Statutory damages must not be less than one thousand  
17 dollars and not more than ten thousand dollars per employee, unless  
18 the person engaged in a pattern or practice of violations, in which  
19 case the statutory damages must be not less than ten thousand dollars  
20 and not more than twenty-five thousand dollars per employee;

21 (b) May order persons, including employers, to jointly and  
22 severally pay the employee reimbursement for any taxes and the value  
23 of any benefits paid by the employee; and

24 (c) Shall order persons, including employers, to jointly and  
25 severally pay attorneys' fees and costs.

26 (3) If a court determines that an employer violated section 16 of  
27 this act, it may order the employer to pay any taxes owed and award  
28 injunctive or other equitable relief, including reinstatement and  
29 reclassification of the employee with terms and conditions at least  
30 as favorable as those that applied when the employee was  
31 misclassified, including rate of compensation, value of any benefits,  
32 and hours of work. The court may award front pay in lieu of  
33 reinstatement.

34 (4) A civil action under this section must be brought no later  
35 than three years after the violation occurred. For the purposes of  
36 this section, a violation occurs from the initial date of  
37 misclassification and for as long as the employee continues to be  
38 misclassified. The three-year period is tolled during any period of  
39 time that an employer, any of its agents, or any person acting on

1 behalf of the employer deters an individual from bringing an action  
2 under this section.

3 NEW SECTION. **Sec. 19.** (1) If an employer engages an individual  
4 to perform labor or services for remuneration and considers the  
5 individual to be an independent contractor, the employer shall post  
6 and keep posted the following notice:

7 "Every worker has the right to be properly classified as an  
8 employee rather than an independent contractor if the  
9 individual does not meet the requirements of an independent  
10 contractor under the law known as the employee fair  
11 classification act.

12 If you believe you or someone else has been improperly  
13 classified as an independent contractor under the employee  
14 fair classification act, you have the right to challenge this  
15 classification by filing a complaint with the department of  
16 labor and industries or by bringing an action in state  
17 court."

18 (2) The notice required by this section must be in English,  
19 Spanish, and any other language or languages primarily spoken by the  
20 majority of the workforce. The notice must be posted in a conspicuous  
21 place in each of the employer's offices in the state and at each job  
22 site where a worker classified as an independent contractor performs  
23 labor or services.

24 NEW SECTION. **Sec. 20.** The employee fair classification act  
25 account is created in the state treasury. All receipts from civil  
26 penalties issued under section 17 of this act must be deposited in  
27 the account. Moneys in the account may be spent only after  
28 appropriation. Expenditures from the account may be used only for  
29 enforcement of this chapter.

30 NEW SECTION. **Sec. 21.** The department may adopt rules to  
31 implement this chapter. In addition, the department may develop a  
32 plan for strategic enforcement of this chapter, prioritizing  
33 industries and workplaces with a high concentration of violations.

34 **PREVAILING WAGE**

1       **Sec. 22.** RCW 39.12.010 and 1989 c 12 s 6 are each amended to  
2 read as follows:

3       (1) The "prevailing rate of wage," for the intents and purposes  
4 of this chapter, shall be the rate of hourly wage, usual benefits,  
5 and overtime paid in the locality, as hereinafter defined, to the  
6 majority of workers, laborers, or mechanics, in the same trade or  
7 occupation. In the event that there is not a majority in the same  
8 trade or occupation paid at the same rate, then the average rate of  
9 hourly wage and overtime paid to such laborers, workers, or mechanics  
10 in the same trade or occupation shall be the prevailing rate. If the  
11 wage paid by any contractor or subcontractor to laborers, workers, or  
12 mechanics on any public work is based on some period of time other  
13 than an hour, the hourly wage for the purposes of this chapter shall  
14 be mathematically determined by the number of hours worked in such  
15 period of time.

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

19       (3) The "usual benefits" for the purposes of this chapter shall  
20 include the amount of:

21       (a) The rate of contribution irrevocably made by a contractor or  
22 subcontractor to a trustee or to a third person pursuant to a fund,  
23 plan, or program; and

24       (b) The rate of costs to the contractor or subcontractor which  
25 may be reasonably anticipated in providing benefits to workers,  
26 laborers, and mechanics pursuant to an enforceable commitment to  
27 carry out a financially responsible plan or program which was  
28 communicated in writing to the workers, laborers, and mechanics  
29 affected, for medical or hospital care, pensions on retirement or  
30 death, compensation for injuries or illness resulting from  
31 occupational activity, or insurance to provide any of the foregoing,  
32 for unemployment benefits, life insurance, disability and sickness  
33 insurance, or accident insurance, for vacation and holiday pay, for  
34 defraying costs of apprenticeship or other similar programs, or for  
35 other bona fide fringe benefits, but only where the contractor or  
36 subcontractor is not required by other federal, state, or local law  
37 to provide any of such benefits.

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

1 (5) "Employer" and "independent contractor" have the same  
2 meanings as in section 14 of this act.

3 (6)(a) "Pattern or practice" means that, in addition to the  
4 current violation, within the previous ten years the employer was:

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

7 (ii) Subject to a court order entering final judgment for a  
8 violation of this chapter or chapter 49.46, 49.48, 49.52, or 49.---  
9 RCW (the new chapter created in section 42(2) of this act), and the  
10 judgment was not satisfied or current within thirty days of the later  
11 of: (A) The expiration of the time for appealing the order; or (B) if  
12 a timely appeal was made, the date of the final resolution of the  
13 appeal; or

14 (iii) Subject to a final and binding citation and notice of  
15 assessment from the department of labor and industries for a  
16 violation of this chapter or chapter 49.48 RCW, and the citation and  
17 penalty was not satisfied or current within thirty days of the date  
18 the citation became final and binding.

19 (b) For purposes of this subsection (6), an employer includes a  
20 successor employer, as defined in RCW 49.48.082.

21 (7) 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  
25 director of labor and industries or the director's designee.

26 NEW SECTION. Sec. 23. A new section is added to chapter 39.12  
27 RCW to read as follows:

28 An employer-employee relationship exists when a laborer, worker,  
29 or mechanic performs labor 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 **Sec. 24.** RCW 39.12.050 and 2009 c 219 s 3 are each amended to  
33 read as follows:

34 (1) Any contractor or subcontractor who files a false statement  
35 or fails to file any statement or record required to be filed under  
36 this chapter and the rules adopted under this chapter, shall, after a  
37 determination to that effect has been issued by the director after  
38 hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum



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

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

13 (2) If a contractor or subcontractor is found to have (~~violated~~  
14 ~~the provisions of subsection (1) of this section for a second time~~  
15 ~~within a five year period~~) engaged in a pattern or practice of  
16 violations, the contractor or subcontractor shall be subject to the  
17 sanctions prescribed in subsection (1) of this section and shall not  
18 be allowed to bid on any public works contract for one year. The one  
19 year period shall run from the date of notice by the director of the  
20 determination of noncompliance. When an appeal is taken from the  
21 director's determination, the one year period shall commence from the  
22 date of the final determination of the appeal.

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

#### 26 WAGE DEDUCTIONS

27 NEW SECTION. **Sec. 25.** A new section is added to chapter 49.52  
28 RCW to read as follows:

29 (1) "Employer" and "independent contractor" have the same  
30 meanings as in section 14 of this act.

31 (2) "Employee" has the same meaning as in section 14(4) (a) and  
32 (b) of this act.

33 NEW SECTION. **Sec. 26.** A new section is added to chapter 49.52  
34 RCW to read as follows:

35 (1) An employer-employee relationship exists when an individual  
36 performs labor or services for an employer. The party asserting that

1 an individual is not an employee must establish by a preponderance of  
2 the evidence that the individual is an independent contractor.

3 (2) A general contractor is not responsible for violations of a  
4 bona fide independent contractor or subcontractor under this chapter  
5 unless the general contractor exerts substantial control over the  
6 day-to-day work of the independent contractor or subcontractor. For  
7 purposes of this section, "general contractor" and "subcontractor"  
8 have the same meanings as in section 15(2) (a) and (b) of this act.

9 **WAGE PAYMENT ACT**

10 **Sec. 27.** RCW 49.48.082 and 2010 c 42 s 1 are each reenacted and  
11 amended to read as follows:

12 The definitions in this section apply throughout this section and  
13 RCW 49.48.083 through 49.48.086:

14 (1) "Citation" means a written determination by the department  
15 that a wage payment requirement has been violated.

16 (2) "Department" means the department of labor and industries.

17 (3) "Determination of compliance" means a written determination  
18 by the department that wage payment requirements have not been  
19 violated.

20 (4) "Director" means the director of the department of labor and  
21 industries, or the director's authorized representative.

22 (5) "Employee" has the meaning provided in: (a) RCW 49.46.010 for  
23 purposes of a wage payment requirement set forth in RCW 49.46.020 or  
24 49.46.130; and (b) ~~((RCW 49.12.005))~~ section 14(4) (a) and (b) of  
25 this act for purposes of a wage payment requirement set forth in RCW  
26 49.48.010, 49.52.050, or 49.52.060.

27 (6) "Employer" ~~((has the meaning provided in RCW 49.46.010 for~~  
28 ~~purposes of a wage payment requirement set forth in RCW 49.46.020,~~  
29 ~~49.46.130, 49.48.010, 49.52.050, or 49.52.060))~~ and "independent  
30 contractor" have the same meanings as in section 14 of this act.

31 (7) "Notice of assessment" means a written notice by the  
32 department that, based on a citation, the employer shall pay the  
33 amounts assessed under RCW 49.48.083.

34 (8) "Repeat willful violator" means any employer that has been  
35 the subject of a final and binding citation and notice of assessment  
36 for a willful violation of a wage payment requirement within three  
37 years of the date of issue of the most recent citation and notice of  
38 assessment for a willful violation of a wage payment requirement.

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

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

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

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

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

17 NEW SECTION. **Sec. 28.** A new section is added to chapter 49.48  
18 RCW to read as follows:

19 (1) An employer-employee relationship exists when an individual  
20 performs labor or services for an employer. The party asserting that  
21 an individual is not an employee must establish by a preponderance of  
22 the evidence that the individual is an independent contractor or is  
23 otherwise not an employee under this chapter.

24 (2) A general contractor is not responsible for violations of a  
25 bona fide independent contractor or subcontractor under this chapter  
26 unless the general contractor exerts substantial control over the  
27 day-to-day work of the independent contractor or subcontractor. For  
28 purposes of this section, "general contractor" and "subcontractor"  
29 have the same meaning as in section 15(2) (a) and (b) of this act.

### 30 **MINIMUM WAGE ACT**

31 **Sec. 29.** RCW 49.46.010 and 2015 c 299 s 3 are each amended to  
32 read as follows:

33 As used in this chapter:

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

35 (2) (~~"Employ" includes to permit to work~~) "Department,"  
36 "employ," and "employer" have the same meanings as in section 14 of  
37 this act;

1 (3) "Employee" (~~includes any individual employed by an employer~~  
2 ~~but~~) has the same meaning as in section 14(4) (a) and (b) of this  
3 act and shall not include:

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

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

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

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

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

39 (f) Any newspaper vendor, carrier, or delivery person selling or  
40 distributing newspapers on the street, to offices, to businesses, or

1 from house to house and any freelance news correspondent or  
2 "stringer" who, using his or her own equipment, chooses to submit  
3 material for publication for free or a fee when such material is  
4 published;

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

7 (h) Any individual engaged in forest protection and fire  
8 prevention activities;

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

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

18 (k) Any resident, inmate, or patient of a state, county, or  
19 municipal correctional, detention, treatment or rehabilitative  
20 institution;

21 (l) Any individual who holds a public elective or appointive  
22 office of the state, any county, city, town, municipal corporation or  
23 quasi municipal corporation, political subdivision, or any  
24 instrumentality thereof, or any employee of the state legislature;

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

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

29 (o) Any farm intern providing his or her services to a small farm  
30 which has a special certificate issued under RCW 49.12.470;

31 (p) An individual who is at least sixteen years old but under  
32 twenty-one years old, in his or her capacity as a player for a junior  
33 ice hockey team that is a member of a regional, national, or  
34 international league and that contracts with an arena owned,  
35 operated, or managed by a public facilities district created under  
36 chapter 36.100 RCW;

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

1       ~~(5))~~) "Occupation" means any occupation, service, trade,  
2 business, industry, or branch or group of industries or employment or  
3 class of 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  
9 reason of employment, payable in legal tender of the United States or  
10 checks on banks convertible into cash on demand at full face value,  
11 subject to such deductions, charges, or allowances as may be  
12 permitted by rules of the director.

13       **Sec. 30.** RCW 49.46.010 and 2015 c 299 s 3 are each amended to  
14 read as follows:

15       As used in this chapter:

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

17       (2) ~~(("Employ" includes to permit to work))~~) "Department,"  
18 "employ," and "employer" have the same meanings as in section 14 of  
19 this act;

20       (3) "Employee" ~~((includes any individual employed by an employer~~  
21 ~~but))~~) has the same meaning as in section 14(4) (a) and (b) of this  
22 act and shall not include:

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

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

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

1 (d) Any individual engaged in the activities of an educational,  
2 charitable, religious, state or local governmental body or agency, or  
3 nonprofit organization where the employer-employee relationship does  
4 not in fact exist or where the services are rendered to such  
5 organizations gratuitously. If the individual receives reimbursement  
6 in lieu of compensation for normally incurred out-of-pocket expenses  
7 or receives a nominal amount of compensation per unit of voluntary  
8 service rendered, an employer-employee relationship is deemed not to  
9 exist for the purpose of this section or for purposes of membership  
10 or qualification in any state, local government, or publicly  
11 supported retirement system other than that provided under chapter  
12 41.24 RCW;

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

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

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

28 (h) Any individual engaged in forest protection and fire  
29 prevention activities;

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

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

1 (k) Any resident, inmate, or patient of a state, county, or  
2 municipal correctional, detention, treatment or rehabilitative  
3 institution;

4 (l) Any individual who holds a public elective or appointive  
5 office of the state, any county, city, town, municipal corporation or  
6 quasi municipal corporation, political subdivision, or any  
7 instrumentality thereof, or any employee of the state legislature;

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

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

12 (o) An individual who is at least sixteen years old but under  
13 twenty-one years old, in his or her capacity as a player for a junior  
14 ice hockey team that is a member of a regional, national, or  
15 international league and that contracts with an arena owned,  
16 operated, or managed by a public facilities district created under  
17 chapter 36.100 RCW;

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

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

25 ~~((6))~~) (5) "Retail or service establishment" means an  
26 establishment seventy-five percent of whose annual dollar volume of  
27 sales of goods or services, or both, is not for resale and is  
28 recognized as retail sales or services in the particular industry;

29 ~~((7))~~) (6) "Wage" means compensation due to an employee by  
30 reason of employment, payable in legal tender of the United States or  
31 checks on banks convertible into cash on demand at full face value,  
32 subject to such deductions, charges, or allowances as may be  
33 permitted by rules of the director.

34 NEW SECTION. **Sec. 31.** A new section is added to chapter 49.46  
35 RCW to read as follows:

36 (1) An employer-employee relationship exists when an individual  
37 performs labor or services for an employer. The party asserting that  
38 an individual is not an employee must establish by a preponderance of



1 the evidence that the individual is an independent contractor or is  
2 otherwise not an employee under this chapter.

3 (2) A general contractor is not responsible for violations of a  
4 bona fide independent contractor or subcontractor under this chapter  
5 unless the general contractor exerts substantial control over the  
6 day-to-day work of the independent contractor or subcontractor. For  
7 purposes of this section, "general contractor" and "subcontractor"  
8 have the same meaning as in section 15(2) (a) and (b) of this act.

9 **UNEMPLOYMENT INSURANCE**

10 NEW SECTION. **Sec. 32.** A new section is added to chapter 50.04  
11 RCW to read as follows:

12 The services of an independent contractor, as defined in section  
13 14 of this act, are not services in employment under this title.

14 NEW SECTION. **Sec. 33.** A new section is added to chapter 50.04  
15 RCW to read as follows:

16 Services performed by an individual for remuneration shall be  
17 deemed to be employment subject to this title. The party asserting  
18 that personal services are not services in employment must establish  
19 by a preponderance of the evidence that the individual is an  
20 independent contractor or that the services are otherwise not in  
21 employment under this title.

22 **Sec. 34.** RCW 50.04.100 and 1982 1st ex.s. c 18 s 14 are each  
23 amended to read as follows:

24 "Employment," subject only to the other provisions of this title,  
25 means personal service, of whatever nature, unlimited by the  
26 relationship of master and servant as known to the common law or any  
27 other legal relationship, including service in interstate commerce,  
28 performed for wages or under any contract calling for the performance  
29 of personal services, written or oral, express or implied.

30 (~~Except as provided by RCW 50.04.145,~~) Personal services  
31 performed for an employing unit by one or more contractors or  
32 subcontractors acting individually or as a partnership, which do not  
33 meet the provisions of (~~RCW 50.04.140~~) section 32 of this act,  
34 shall be considered employment of the employing unit: PROVIDED,  
35 HOWEVER, That such contractor or subcontractor shall be an employer

1 under the provisions of this title in respect to personal services  
2 performed by individuals for such contractor or subcontractor.

3 **Sec. 35.** RCW 50.04.298 and 2007 c 146 s 8 are each amended to  
4 read as follows:

5 For the purposes of this title:

6 (1) "Professional employer organization" means a person or entity  
7 that enters into an agreement with one or more client employers to  
8 provide professional employer services. "Professional employer  
9 organization" includes entities that use the term "staff leasing  
10 company," "permanent leasing company," "registered staff leasing  
11 company," "employee leasing company," "administrative employer," or  
12 any other name, when they provide professional employer services to  
13 client employers. The following are not classified as professional  
14 employer organizations: Independent contractors in (~~RCW 50.04.140~~)  
15 section 32 of this act; temporary staffing services companies and  
16 services referral agencies as defined in RCW 50.04.245; third-party  
17 payers as defined in RCW 50.04.248; or labor organizations.

18 (2) "Client employer" means any employer who enters into a  
19 professional employer agreement with a professional employer  
20 organization.

21 (3) "Coemployer" means either a professional employer  
22 organization or a client employer that has entered into a  
23 professional employer agreement.

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

26 (5) "Professional employer services" means services provided by  
27 the professional employer organization to the client employer, which  
28 include, but are not limited to, human resource functions, risk  
29 management, or payroll administration services, in a coemployment  
30 relationship.

31 (6) "Coemployment relationship" means a relationship that is  
32 intended to be ongoing rather than temporary or project-specific,  
33 where the rights, duties, and obligations of an employer in an  
34 employment relationship are allocated between coemployers pursuant to  
35 a professional employer agreement and state law. A coemployment  
36 relationship exists only if a majority of the employees performing  
37 services to a client employer, or to a division or work unit of a  
38 client employer, are covered employees. In determining the allocation  
39 of rights and obligations in a coemployment relationship:

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

4 (b) The client employer has those rights and obligations  
5 allocated to it by the professional employer agreement or state law,  
6 as well as any other right or obligation of an employer that is not  
7 specifically allocated by the professional employer agreement or  
8 state law.

9 (7) "Professional employer agreement" means a written contract  
10 between a client employer and a professional employer organization  
11 that provides for: (a) The coemployment of covered employees; and (b)  
12 the allocation of employer rights and obligations between the client  
13 and the professional employer organization with respect to the  
14 covered employees.

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

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

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

32 (2)(a) Each employer shall register with the department and  
33 obtain an employment security account number. Each employer shall  
34 make periodic reports at such intervals as the commissioner may by  
35 regulation prescribe, setting forth the remuneration paid for  
36 employment to workers in its employ, the full names and social  
37 security numbers of all such workers, and the total hours worked by  
38 each worker and such other information as the commissioner may by  
39 regulation prescribe.

1 (b) If the employing unit fails or has failed to report the  
2 number of hours in a reporting period for which a worker worked, such  
3 number will be computed by the commissioner and given the same force  
4 and effect as if it had been reported by the employing unit. In  
5 computing the number of such hours worked, the total wages for the  
6 reporting period, as reported by the employing unit, shall be divided  
7 by the dollar amount of the state's minimum wage in effect for such  
8 reporting period and the quotient, disregarding any remainder, shall  
9 be credited to the worker: PROVIDED, That although the computation so  
10 made will not be subject to appeal by the employing unit, monetary  
11 entitlement may be redetermined upon request if the department is  
12 provided with credible evidence of the actual hours worked. Benefits  
13 paid using computed hours are not considered an overpayment and are  
14 not subject to collections when the correction of computed hours  
15 results in an invalid or reduced claim; however:

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

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

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

29 (4) Upon referral from the department of labor and industries  
30 pursuant to section 17 of this act, the employment security  
31 department may initiate procedures for improper recordkeeping and the  
32 recovery of contributions, interest, and penalties.

33 **Sec. 37.** RCW 50.12.072 and 2010 c 72 s 2 are each amended to  
34 read as follows:

35 (1) An employer that knowingly fails to register with the  
36 department and obtain an employment security account number, as  
37 required under RCW 50.12.070(2), is subject to a penalty not to  
38 exceed one thousand dollars per quarter or two times the taxes due  
39 per quarter, whichever is greater. This penalty is in addition to all

1 other penalties and is in addition to higher rates for employers that  
2 do not meet the definition of "qualified employer" under RCW  
3 50.29.010. This penalty does not apply if the employer can prove that  
4 it had good cause to believe that it was not required to register  
5 with the department.

6 (2) Upon referral from the department of labor and industries  
7 pursuant to section 17 of this act, the employment security  
8 department may initiate procedures for improper recordkeeping and the  
9 recovery of contributions, interest, and penalties.

10 **Sec. 38.** RCW 50.24.070 and 2011 c 301 s 18 are each amended to  
11 read as follows:

12 (1) At any time after the commissioner shall find that any  
13 contributions, interest, or penalties have become delinquent, the  
14 commissioner may issue an order and notice of assessment specifying  
15 the amount due, which order and notice of assessment shall be served  
16 upon the delinquent employer in the manner prescribed for the service  
17 of a summons in a civil action, or using a method by which the  
18 mailing can be tracked or the delivery can be confirmed. Failure of  
19 the employer to receive such notice or order whether served or mailed  
20 shall not release the employer from any tax, or any interest or  
21 penalties thereon.

22 (2) The commissioner must consider referrals based on a court  
23 finding of a violation of section 16 of this act and may pursue a  
24 claim for contributions.

## 25 **INDUSTRIAL INSURANCE**

26 **Sec. 39.** RCW 51.08.070 and 2008 c 102 s 2 are each amended to  
27 read as follows:

28 "Employer" means any person, body of persons, corporate or  
29 otherwise, and the legal representatives of a deceased employer, all  
30 while engaged in this state in any work covered by the provisions of  
31 this title, by way of trade or business, or who contracts with one or  
32 more workers, the essence of which is the personal labor of such  
33 worker or workers. Or as an exception to the definition of employer,  
34 persons or entities are not employers when they contract or agree to  
35 remunerate the services performed by an (~~individual who meets the~~  
36 ~~tests set forth in subsections (1) through (6) of RCW 51.08.195 or~~  
37 ~~the separate tests set forth in RCW 51.08.181 for work performed that~~

1 ~~requires registration under chapter 18.27 RCW or licensing under~~  
2 ~~chapter 19.28 RCW)) independent contractor as defined in section 14~~  
3 ~~of this act.~~

4 **Sec. 40.** RCW 51.08.180 and 2008 c 102 s 3 are each amended to  
5 read as follows:

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

22 NEW SECTION. **Sec. 41.** A new section is added to chapter 51.12  
23 RCW to read as follows:

24 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.

28 NEW SECTION. **Sec. 42.** (1) Sections 1 through 11 of this act  
29 constitute a new chapter in Title 49 RCW.

30 (2) Sections 13 through 21 of this act constitute a new chapter  
31 in Title 49 RCW.

32 NEW SECTION. **Sec. 43.** If any provision of this act or its  
33 application to any person or circumstance is held invalid, the  
34 remainder of the act or the application of the provision to other  
35 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 44.**    If any part of this act is found to be in  
2 conflict with federal requirements that are a prescribed condition to  
3 the allocation of federal funds to the state or the eligibility of  
4 employers in this state for federal unemployment tax credits, the  
5 conflicting part of this act is inoperative solely to the extent of  
6 the conflict, and the finding or determination does not affect the  
7 operation of the remainder of this act. Rules adopted under this act  
8 must meet federal requirements that are a necessary condition to the  
9 receipt of federal funds by the state or the granting of federal  
10 unemployment tax credits to employers in this state.

11        NEW SECTION.    **Sec. 45.**    The following acts or parts of acts are  
12 each repealed:

13            (1) RCW 39.12.100 (Independent contractors—Criteria) and 2009 c  
14 63 s 1;

15            (2) RCW 50.04.140 (Employment—Exception tests) and 1991 c 246 s 6  
16 & 1945 c 35 s 15;

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

19            (4) RCW 51.08.181 ("Worker"—Registered contractor and electrician  
20 exclusions) and 2008 c 102 s 5; and

21            (5) RCW 51.08.195 ("Employer" and "worker"—Additional exception)  
22 and 2008 c 102 s 4 & 1991 c 246 s 1.

23        NEW SECTION.    **Sec. 46.**    Section 29 of this act expires December  
24 31, 2019.

25        NEW SECTION.    **Sec. 47.**    Section 30 of this act takes effect  
26 December 31, 2019.

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