
ENGROSSED SUBSTITUTE SENATE BILL 5264

AS AMENDED BY THE HOUSE

Passed Legislature - 2002 Regular Session

State of Washington 57th Legislature 2001 Regular Session

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

READ FIRST TIME 03/08/01.

1 AN ACT Relating to unfair practices by public employers with
2 respect to eligibility for employment-based benefits; adding new
3 sections to chapter 49.44 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.44 RCW
6 to read as follows:

7 The legislature intends that public employers be prohibited from
8 misclassifying employees, or taking other action to avoid providing or
9 continuing to provide employment-based benefits to which employees are
10 entitled under state law or employer policies or collective bargaining
11 agreements applicable to the employee's correct classification.

12 This act does not mandate that any public employer provide benefits
13 to actual temporary, seasonal, or part-time employees beyond the
14 benefits to which they are entitled under state law or employer
15 policies or collective bargaining agreements applicable to the
16 employee's correct classification. Public employers may determine
17 eligibility rules for their own benefit plans and may exclude
18 categories of workers such as "temporary" or "seasonal," so long as the
19 definitions and eligibility rules are objective and applied on a

1 consistent basis. Objective standards, such as control over the work
2 and the length of the employment relationship, should determine whether
3 a person is an employee who is entitled to employee benefits, rather
4 than the arbitrary application of labels, such as "temporary" or
5 "contractor." Common law standards should be used to determine whether
6 a person is performing services as an employee, as a contractor, or as
7 part of an agency relationship.

8 This act does not modify any statute or policy regarding the
9 employment of: Public employee retirees who are hired for
10 postretirement employment as provided for in chapter 41.26, 41.32,
11 41.35, or 41.40 RCW or who work as contractors; or enrolled students
12 who receive employment as student employees or as part of their
13 education or financial aid.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.44 RCW
15 to read as follows:

16 (1) It is an unfair practice for any public employer to:

17 (a) Misclassify any employee to avoid providing or continuing to
18 provide employment-based benefits; or

19 (b) Include any other language in a contract with an employee that
20 requires the employee to forgo employment-based benefits.

21 (2) The definitions in this subsection apply throughout this act
22 unless the context clearly requires otherwise.

23 (a) "Employee" means a person who is providing services for
24 compensation to an employer, unless the person is free from the
25 employer's direction and control over the performance of work. This
26 definition shall be interpreted consistent with common law.

27 (b) "Employment-based benefits" means any benefits to which
28 employees are entitled under state law or employer policies or
29 collective bargaining agreements applicable to the employee's correct
30 classification.

31 (c) "Public employer" means: (i) Any unit of local government
32 including, but not limited to, a county, city, town, municipal
33 corporation, quasi-municipal corporation, or political subdivision; and
34 (ii) the state, state institutions, and state agencies. This
35 definition shall be interpreted consistent with common law.

36 (d) "Misclassify" and "misclassification" means to incorrectly
37 classify or label a long-term public employee as "temporary," "leased,"
38 "contract," "seasonal," "intermittent," or "part-time," or to use a

1 similar label that does not objectively describe the employee's actual
2 work circumstances.

3 (3) An employee deeming himself or herself harmed in violation of
4 subsection (1) of this section may bring a civil action in a court of
5 competent jurisdiction.

6 NEW SECTION. **Sec. 3.** This act shall be construed liberally for
7 the accomplishment of its purposes.

8 NEW SECTION. **Sec. 4.** If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected.

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