
SUBSTITUTE SENATE BILL 5123

State of Washington

63rd Legislature

2013 Regular Session

By Senate Ways & Means (originally sponsored by Senators Ranker, Hatfield, Hobbs, Parlette, and Conway)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to a farm internship program; reenacting and
2 amending RCW 49.46.010; adding a new section to chapter 49.12 RCW;
3 adding a new section to chapter 51.16 RCW; adding a new section to
4 chapter 50.04 RCW; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.12 RCW
7 to read as follows:

8 (1) The director shall establish a farm internship pilot project
9 until December 1, 2017, for the employment of farm interns on small
10 farms under special certificates at wages, if any, as authorized by the
11 department and subject to such limitations as to time, number,
12 proportion, and length of service as provided in this section and as
13 prescribed by the department. The pilot project consists of the
14 following counties: San Juan, Skagit, King, Whatcom, Kitsap, Pierce,
15 Jefferson, Spokane, Yakima, Chelan, Grant, Island, Snohomish, Kittitas,
16 Lincoln, and Thurston.

17 (2) A small farm may employ no more than three interns at one time
18 under this section.

1 (3) A small farm must apply for a special certificate on a form
2 made available by the director. The application must set forth: The
3 name of the farm and a description of the farm seeking the certificate;
4 the type of work to be performed by a farm intern; a description of the
5 internship program; the period of time for which the certificate is
6 sought and the duration of an internship; the number of farm interns
7 for which a special certificate is sought; the wages, if any, that will
8 be paid to the farm intern; any room and board, stipends, and other
9 remuneration the farm will provide to a farm intern; and the total
10 number of workers employed by the farm.

11 (4) Upon receipt of an application, the department shall review the
12 application and issue a special certificate to the requesting farm
13 within fifteen days if the department finds that:

14 (a) The farm qualifies as a small farm;

15 (b) There have been no serious violations of chapter 49.46 RCW or
16 Title 51 RCW that provide reasonable grounds to believe that the terms
17 of an internship agreement may not be complied with;

18 (c) The issuance of a certificate will not create unfair
19 competitive labor cost advantages nor have the effect of impairing or
20 depressing wage or working standards established for experienced
21 workers for work of a like or comparable character in the industry or
22 occupation at which the intern is to be employed;

23 (d) A farm intern will not displace an experienced worker; and

24 (e) The farm demonstrates that the interns will perform work for
25 the farm under an internship program that: (i) Provides a curriculum
26 of learning modules and supervised participation in farm work
27 activities designed to teach farm interns about farming practices and
28 farm enterprises; (ii) is based on the bona fide curriculum of an
29 educational or vocational institution; and (iii) is reasonably designed
30 to provide the intern with vocational knowledge and skills about
31 farming practices and enterprises. In assessing an internship program,
32 the department may consult with relevant college and university
33 departments and extension programs and state and local government
34 agencies involved in the regulation or development of agriculture.

35 (5) A special certificate issued under this section must specify
36 the terms and conditions under which it is issued, including: The name
37 of the farm; the duration of the special certificate allowing the
38 employment of farm interns and the duration of an internship; the total

1 number of interns authorized under the special certificate; the
2 authorized wage rate, if any; and any room and board, stipends, and
3 other remuneration the farm will provide to the farm intern. A farm
4 worker may be paid at wages specified in the certificate only during
5 the effective period of the certificate and for the duration of the
6 internship.

7 (6) If the department denies an application for a special
8 certificate, notice of denial must be mailed to the farm. The farm
9 listed on the application may, within fifteen days after notice of such
10 action has been mailed, file with the director a petition for review of
11 the denial, setting forth grounds for seeking such a review. If
12 reasonable grounds exist, the director or the director's authorized
13 representative may grant such a review and, to the extent deemed
14 appropriate, afford all interested persons an opportunity to be heard
15 on such review.

16 (7) Before employing a farm intern, a farm must submit a statement
17 on a form made available by the director stating that the farm
18 understands: The requirements of the industrial welfare act, chapter
19 49.12 RCW, that apply to farm interns; that the farm must pay workers'
20 compensation premiums in the assigned intern risk class and must pay
21 workers' compensation premiums for nonintern work hours in the
22 applicable risk class; and that if the farm does not comply with
23 subsection (8) of this section, the director may revoke the special
24 certificate.

25 (8) The director may revoke a special certificate issued under this
26 section if a farm fails to: Comply with the requirements of the
27 industrial welfare act, chapter 49.12 RCW, that apply to farm interns;
28 pay workers' compensation premiums in the assigned intern risk class;
29 or pay workers' compensation premiums in the applicable risk class for
30 nonintern work hours.

31 (9) Before the start of a farm internship, the farm and the intern
32 must sign a written agreement and send a copy of the agreement to the
33 department. The written agreement must, at a minimum:

34 (a) Describe the internship program offered by the farm, including
35 the skills and objectives the program is designed to teach and the
36 manner in which those skills and objectives will be taught;

37 (b) Explicitly state that the intern is not entitled to

1 unemployment benefits or minimum wages for work and activities
2 conducted pursuant to the internship program for the duration of the
3 internship;

4 (c) Describe the responsibilities, expectations, and obligations of
5 the intern and the farm, including the anticipated number of hours of
6 farm activities to be performed by and the anticipated number of hours
7 of curriculum instruction provided to the intern per week;

8 (d) Describe the activities of the farm and the type of work to be
9 performed by the farm intern; and

10 (e) Describes any wages, room and board, stipends, and other
11 remuneration the farm will provide to the farm intern.

12 (10) The department must limit the administrative costs of
13 implementing the internship pilot program by relying on farm
14 organizations and other stakeholders to perform outreach and inform the
15 farm community of the program and by limiting employee travel to the
16 investigation of allegations of noncompliance with program
17 requirements.

18 (11) The definitions in this subsection apply throughout this
19 section unless the context clearly requires otherwise.

20 (a) "Farm intern" means an individual who provides services to a
21 small farm under a written agreement and primarily as a means of
22 learning about farming practices and farm enterprises.

23 (b) "Farm internship program" means an internship program described
24 under subsection (4)(e) of this section.

25 (c) "Small farm" means a farm:

26 (i) Organized as a sole proprietorship, partnership, or
27 corporation;

28 (ii) That reports on the applicant's schedule F of form 1040 or
29 other applicable form filed with the United States internal revenue
30 service annual sales less than two hundred fifty thousand dollars; and

31 (iii) Where all the owners or partners of the farm provide regular
32 labor to and participate in the management of the farm, and own or
33 lease the productive assets of the farm.

34 (12) The department shall monitor and evaluate the farm internships
35 authorized by this section and report to the appropriate committees of
36 the legislature by December 31, 2017. The report must include, but not
37 be limited to: The number of small farms that applied for and received
38 special certificates; the number of interns employed as farm interns;

1 the nature of the educational activities provided to the farm interns;
2 the wages and other remuneration paid to farm interns; the number of
3 and type of workers' compensation claims for farm interns; the
4 employment of farm interns following farm internships; and other
5 matters relevant to assessing farm internships authorized in this
6 section.

7 **Sec. 2.** RCW 49.46.010 and 2011 1st sp.s. c 43 s 462 are each
8 reenacted and amended to read as follows:

9 As used in this chapter:

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

11 (2) "Employ" includes to permit to work;

12 (3) "Employee" includes any individual employed by an employer but
13 shall not include:

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

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

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

30 (d) Any individual engaged in the activities of an educational,
31 charitable, religious, state or local governmental body or agency, or
32 nonprofit organization where the employer-employee relationship does
33 not in fact exist or where the services are rendered to such
34 organizations gratuitously. If the individual receives reimbursement
35 in lieu of compensation for normally incurred out-of-pocket expenses or
36 receives a nominal amount of compensation per unit of voluntary service
37 rendered, an employer-employee relationship is deemed not to exist for

1 the purpose of this section or for purposes of membership or
2 qualification in any state, local government, or publicly supported
3 retirement system other than that provided under chapter 41.24 RCW;

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

11 (f) Any newspaper vendor or carrier;

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

14 (h) Any individual engaged in forest protection and fire prevention
15 activities;

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

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

25 (k) Any resident, inmate, or patient of a state, county, or
26 municipal correctional, detention, treatment or rehabilitative
27 institution;

28 (l) Any individual who holds a public elective or appointive office
29 of the state, any county, city, town, municipal corporation or quasi
30 municipal corporation, political subdivision, or any instrumentality
31 thereof, or any employee of the state legislature;

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

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

36 (o) Any farm intern providing his or her services to a small farm
37 which has a special certificate issued under section 1 of this act;

1 (4) "Employer" includes any individual, partnership, association,
2 corporation, business trust, or any person or group of persons acting
3 directly or indirectly in the interest of an employer in relation to an
4 employee;

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

8 (6) "Retail or service establishment" means an establishment
9 seventy-five percent of whose annual dollar volume of sales of goods or
10 services, or both, is not for resale and is recognized as retail sales
11 or services in the particular industry;

12 (7) "Wage" means compensation due to an employee by reason of
13 employment, payable in legal tender of the United States or checks on
14 banks convertible into cash on demand at full face value, subject to
15 such deductions, charges, or allowances as may be permitted by rules of
16 the director.

17 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.16 RCW
18 to read as follows:

19 The department shall adopt rules to provide special workers'
20 compensation risk class or classes for farm interns providing
21 agricultural labor pursuant to a farm internship program under section
22 1 of this act. The rules must include any requirements for obtaining
23 a special risk class that must be met by small farms.

24 NEW SECTION. **Sec. 4.** A new section is added to chapter 50.04 RCW
25 to read as follows:

26 (1) Except for services subject to RCW 50.44.010, 50.44.020,
27 50.44.030, or 50.50.010, the term "employment" does not include service
28 performed in agricultural labor by a farm intern providing his or her
29 services under a farm internship program as established in section 1 of
30 this act.

31 (2) For purposes of this section, "agricultural labor" means:

32 (a) Services performed on a farm, in the employ of any person, in
33 connection with the cultivation of the soil, or in connection with
34 raising or harvesting any agricultural or horticultural commodity,
35 including raising, shearing, feeding, caring for, training, and
36 management of livestock, bees, poultry, and furbearing animals and

1 wildlife, or in the employ of the owner or tenant or other operator of
2 a farm in connection with the operation, management, conservation,
3 improvement, or maintenance of such farm and its tools and equipment;

4 (b) Services performed in packing, packaging, grading, storing, or
5 delivering to storage, or to market or to a carrier for transportation
6 to market, any agricultural or horticultural commodity; but only if
7 such service is performed as an incident to ordinary farming
8 operations. The exclusions from the term "employment" provided in this
9 subsection (2)(b) are not applicable with respect to commercial packing
10 houses, commercial storage establishments, commercial canning,
11 commercial freezing, or any other commercial processing or with respect
12 to services performed in connection with the cultivation, raising,
13 harvesting and processing of oysters or raising and harvesting of
14 mushrooms; or

15 (c) Direct local sales of any agricultural or horticultural
16 commodity after its delivery to a terminal market for distribution or
17 consumption.

18 NEW SECTION. **Sec. 5.** This act expires December 31, 2017.

--- END ---