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**HOUSE BILL 1516**

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**State of Washington 67th Legislature 2021 Regular Session**

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

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

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

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

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

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

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

(a) The seasonal nature of the work in a particular industry;

(b) The tasks workers are required to perform;

(c) The level of risks to human health and safety involved and other working conditions;

(d) Worker benefits typically offered in the particular industry; and

(e) Any other factors the work group finds appropriate when determining appropriate living wages for agricultural workers.

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

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

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

(iii) One representative from the agricultural services industry; and

(iv) One representative from a statewide labor organization.

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

(i) The director of the department or the director's designee; and

(ii) The director of the department of agriculture or the director's designee.

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

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

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

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

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

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

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

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

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

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

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

(2) This section does not apply to:

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

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

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

(d) Seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year;

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

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

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

~~(h)~~)) Any industry in which federal law provides for an overtime payment based on a workweek other than forty hours. However, the provisions of the federal law regarding overtime payment based on a workweek other than forty hours shall nevertheless apply to employees covered by this section without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state. For the purposes of this subsection, "industry" means a trade, business, industry, or other activity, or branch, or group thereof, in which individuals are gainfully employed (section 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law 93-259));

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

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

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

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

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

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

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

(a) Compensation at the hourly rate, which may not be less than the rate required under RCW 49.46.020, for each hour worked up to forty hours per week, and compensation of one and one-half times that hourly rate for all hours worked over forty hours in one week; or

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

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

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

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

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

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

**--- END ---**