
SENATE BILL 6007

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By Senators Conway, Keiser, Hasegawa, Dhingra, Randall, Saldaña, Liiias, Hunt, Nguyen, Kuderer, Van De Wege, Frame, Nobles, Pedersen, Salomon, Shewmake, Stanford, Trudeau, Valdez, and C. Wilson

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1 AN ACT Relating to employment standards for grocery workers;
2 reenacting and amending RCW 49.48.082; adding a new chapter to Title
3 49 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** (1) Supermarkets and other grocery
6 retailers are the primary points of distribution for food and other
7 daily necessities for the residents of Washington and are therefore
8 essential to the vitality of every Washington community.

9 (2) The state has a compelling interest in ensuring the welfare
10 of the residents of its communities through the maintenance of health
11 and safety standards in grocery establishments.

12 (3) Experienced grocery retail workers with knowledge of proper
13 sanitation procedures, health regulations and laws, and an
14 experience-based understanding of the clientele and communities in
15 which the retailer is located are essential in furthering this
16 interest and the state's investments in health and safety.

17 (4) A transitional retention period for grocery retail workers
18 upon change of ownership, control, or operation of grocery stores
19 ensures stability throughout the state for these vital workers,
20 which, in turn, results in preservation of health and safety
21 standards.

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

4 (1) "Change in control" means any sale, purchase, assignment,
5 acquisition, transfer, contribution, or other disposition of all or
6 substantially all of the assets, cash on hand, or a controlling
7 interest, including by consolidation, merger, or reorganization, of
8 or by the incumbent grocery employer or any person who controls the
9 incumbent grocery employer or any grocery establishment under the
10 operation or control of either the incumbent grocery employer or any
11 person who controls the incumbent grocery employer.

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

13 (3) "Director" means the director of the department of labor and
14 industries, or the director's designated representative.

15 (4) "Eligible grocery worker" means any individual whose primary
16 place of employment is at the grocery establishment subject to a
17 change in control, and who has worked for the incumbent grocery
18 employer for at least six months prior to the execution of the
19 transfer document. "Eligible grocery worker" does not include a
20 managerial, supervisory, or confidential employee.

21 (5) "Employment commencement date" means the date on which an
22 eligible grocery worker retained by the successor grocery employer
23 pursuant to this chapter commences work for the successor grocery
24 employer in exchange for benefits and compensation under the terms
25 and conditions established by the successor grocery employer and as
26 required by law.

27 (6) (a) "Grocery establishment" means a retail store in this state
28 that is over 15,000 square feet in size and that sells primarily
29 household foodstuffs for off-site consumption, including the sale of
30 fresh produce, meats, poultry, fish, deli products, dairy products,
31 canned foods, dry foods, beverages, baked foods, or prepared foods.
32 Other household supplies or other products must be secondary to the
33 primary purpose of food sales.

34 (b) A distribution center owned and operated by a grocery
35 establishment and used primarily to distribute goods to or from its
36 owned stores is considered a grocery establishment, regardless of its
37 square footage.

38 (c) A grocery establishment does not include a retail store that
39 has ceased operations for 12 months or more.

1 (7) "Incumbent grocery employer" means the person that owns,
2 controls, or operates the grocery establishment at the time of the
3 change in control.

4 (8) "Job classification" means a system for categorizing certain
5 duties into certain jobs.

6 (9) "Person" means an individual, corporation, partnership,
7 limited partnership, limited liability partnership, limited liability
8 company, business trust, estate, trust, association, joint venture,
9 agency, instrumentality, or any other legal or commercial entity,
10 whether domestic or foreign.

11 (10) "Successor grocery employer" means the person that owns,
12 controls, or operates the grocery establishment after the change in
13 control. A successor grocery employer may be the same entity as an
14 incumbent employer when a change in control occurs, but the covered
15 employer remains the same.

16 (11) "Transfer document" means the purchase agreement or other
17 document effecting the change in control.

18 NEW SECTION. **Sec. 3.** (1)(a) The incumbent grocery employer
19 must, within 15 days after the execution of the transfer document,
20 provide to the successor grocery employer and any collective
21 bargaining representative the name, address, date of hire, employment
22 occupation classification, and, if known, the cellular telephone
23 number and email address of each eligible grocery worker.

24 (b) If the incumbent grocery employer does not provide the
25 information specified in (a) of this subsection within 15 days, the
26 successor grocery employer may obtain the information from a
27 collective bargaining representative.

28 (2) The successor grocery employer must maintain a preferential
29 hiring list of eligible grocery workers identified by the incumbent
30 grocery employer or collective bargaining representative pursuant to
31 subsection (1) of this section and must hire from that list for a
32 period beginning upon the execution of the transfer document and
33 continuing for 180 days after the grocery establishment is fully
34 operational and open to the public under the successor grocery
35 employer.

36 (3) If the successor grocery employer extends an offer of
37 employment to an eligible grocery worker pursuant to this chapter,
38 the successor grocery employer must retain written verification of
39 that offer for at least three years after the date of the offer. The

1 verification must include the name, address, date of hire, and
2 employment occupation classification of each eligible grocery worker.

3 NEW SECTION. **Sec. 4.** (1) A successor grocery employer must
4 retain each eligible grocery worker hired pursuant to this chapter
5 for at least 180 days after the eligible grocery worker's employment
6 commencement date. During this 180-day transition employment period,
7 eligible grocery workers must be employed under the terms and
8 conditions established by the successor grocery employer and pursuant
9 to the terms of a relevant collective bargaining agreement, if any.

10 (2) If, within the period established in section 3(2) of this
11 act, the successor grocery employer determines that it requires fewer
12 eligible grocery workers than were required by the incumbent grocery
13 employer, the successor grocery employer must retain eligible grocery
14 workers by seniority within each job classification to the extent
15 that comparable job classifications exist or pursuant to the terms of
16 a relevant collective bargaining agreement, if any. Nonclassified
17 eligible grocery workers must be retained by seniority and according
18 to experience, or pursuant to the terms of a relevant collective
19 bargaining agreement, if any.

20 (3) During the 180-day transition employment period, the
21 successor grocery employer may not discharge without cause an
22 eligible grocery worker retained pursuant to this chapter.

23 (4) At the end of the 180-day transition employment period, the
24 successor grocery employer must make a written performance evaluation
25 for each eligible grocery worker retained pursuant to this chapter.
26 If the eligible grocery worker's performance during the 180-day
27 transition employment period is satisfactory, the successor grocery
28 employer must consider offering the eligible grocery worker continued
29 employment under the terms and conditions established by the
30 successor grocery employer and as required by law. The successor
31 grocery employer must retain a record of the written performance
32 evaluation for at least three years.

33 NEW SECTION. **Sec. 5.** (1) This section only applies to a
34 successor grocery employer that, after a change in control, will own,
35 control, or operate 20 or more grocery establishments.

36 (2) Notwithstanding other provisions of this chapter, if a
37 successor grocery employer does not hire an eligible grocery worker
38 following a change in control or does not retain an eligible grocery

1 worker for at least 180 days following the change in control or the
2 eligible grocery worker's employment commencement date, whichever is
3 later, the successor grocery company must, unless the eligible
4 grocery worker has quit or has been discharged for cause, provide the
5 eligible grocery employee a dislocated grocery worker allowance equal
6 to one week of pay for each full year of employment with the
7 incumbent grocery employer. The rate of the dislocated grocery worker
8 allowance will be the average regular rate of compensation received
9 during the eligible grocery worker's last three years of employment
10 with the incumbent grocery employer or the final regular rate of
11 compensation paid to the eligible grocery worker, whichever is
12 higher.

13 (3) The successor grocery employer must provide the greater of
14 the dislocated grocery worker allowance required pursuant to:

15 (a) Subsection (2) of this section; or

16 (b) The terms of a relevant collective bargaining agreement, if
17 any.

18 NEW SECTION. **Sec. 6.** (1) The incumbent grocery employer must
19 post public notice of the change in control at the location of the
20 affected grocery establishment within five business days following
21 the execution of the transfer document. Notice must remain posted
22 during any closure of the grocery establishment and until the grocery
23 establishment is fully operational and open to the public under the
24 successor grocery employer.

25 (2) Notice must include, but is not limited to:

26 (a) The name of the incumbent grocery employer and its contact
27 information;

28 (b) The name of the successor grocery employer and its contact
29 information; and

30 (c) The effective date of the change in control.

31 (3) Notice must be posted in a conspicuous place at the grocery
32 establishment in a manner to be readily viewed by eligible grocery
33 workers and other employees, customers, and members of the public.

34 NEW SECTION. **Sec. 7.** (1) An employer must not refuse to employ,
35 terminate, reduce the compensation of, or otherwise take adverse
36 action against any employee for seeking to enforce the employee's
37 rights under this chapter, including participating in proceedings,

1 opposing any practice prescribed by this chapter, or otherwise
2 asserting rights under this chapter.

3 (2) This section applies to an employee who mistakenly, but in
4 good faith, alleges noncompliance with this chapter.

5 NEW SECTION. **Sec. 8.** (1) An aggrieved employee or an employee
6 representative, such as a collective bargaining representative or
7 nonprofit corporation, may bring an action in the superior court of
8 the state of Washington for violations of this chapter and may be
9 awarded the following:

10 (a) Hiring and reinstatement rights pursuant to this chapter. For
11 violations of the retention provision, the 180-day transition
12 employment period does not commence until the eligible grocery
13 worker's employment commencement date with the successor grocery
14 employer;

15 (b) Front pay or back pay for each day during which the violation
16 continues;

17 (c) The value of the benefits the employee would have received
18 under any benefit plans;

19 (d) Reasonable attorneys' fees and costs to any employee or
20 employee representative who prevails in an enforcement action.

21 (2) Before an employee or an employee representative brings an
22 action in the superior court of the state of Washington for a
23 violation of this chapter, both of the following requirements must be
24 met:

25 (a) The employee has provided written notice to the employer of
26 the provisions of this chapter alleged to have been violated and the
27 facts to support the alleged violation; and

28 (b) The employer has not cured the alleged violation within 30
29 calendar days from receipt of the written notice.

30 (3) The director may enforce this section, including
31 investigating an alleged violation and ordering appropriate temporary
32 relief to mitigate the violation pending the completion of an
33 investigation or hearing, under the provisions of this chapter and
34 chapter 49.48 RCW and any related rules adopted by the department,
35 including by issuing a citation against an employer who violates this
36 section or by filing a civil action. Any amounts owed to an employee
37 may be enforced as a wage payment requirement under RCW 49.48.082.

38 (4) The director may recover the following remedies on behalf of
39 an aggrieved employee:

1 (a) Hiring and reinstatement rights pursuant to this chapter. For
2 violations of the retention provision, the 180-day transition
3 employment period does not commence until the eligible grocery
4 worker's employment commencement date with the successor grocery
5 employer;

6 (b) Front pay or back pay for each day during which the violation
7 continues;

8 (c) The value of the benefits the employee would have received
9 under any benefit plans.

10 (5) An employer, agent of an employer, or other person who
11 violates this chapter or causes a violation of this chapter may be
12 subject to a civil penalty of \$100 for each employee whose rights
13 under this chapter are violated. An additional amount payable as
14 liquidated damages in the amount of \$100 per employee, for each day
15 the rights of an employee under this chapter are violated and
16 continuing until the violation is cured, not to exceed \$1,000 per
17 employee, which may be recovered by the director and deposited into
18 the supplemental pension fund established under RCW 51.44.033.

19 (6) Citation procedures for issuing, contesting, and enforcing
20 judgments for citations and civil penalties issued by the director
21 must be the same as those set out in RCW 49.48.084, as appropriate.

22 (7) In an action brought by the director for enforcement of this
23 chapter, the court may issue preliminary and permanent injunctive
24 relief to vindicate the rights of employees. In a civil action, the
25 director may also recover all remedies set forth in subsection (4) of
26 this section.

27 (8) The director may adopt and enforce rules and regulations and
28 issue determinations and interpretations consistent with and
29 necessary for the implementation of this section.

30 NEW SECTION. **Sec. 9.** This chapter does not apply to grocery
31 establishments that will be located in geographic areas designated by
32 the United States department of agriculture as food deserts, based on
33 the original food desert measure contained in the Food Access
34 Research Atlas, provided that both of the following apply:

35 (1) More than six years have elapsed since the most recent
36 grocery establishment was located in the area designated as a food
37 desert; and

38 (2) The grocery establishment stocks and, during normal business
39 hours, sells fresh fruit and vegetables in amounts and of a quality

1 that is comparable to what the establishment sells in its three
2 geographically closest stores, which are located outside of the food
3 desert.

4 NEW SECTION. **Sec. 10.** (1) In the case of a change of control
5 from a merger, a successor grocery employer may not cause a grocery
6 establishment that is located in a geographic area designated by the
7 United States department of agriculture as a food desert to cease
8 being fully operational and open to the public until the
9 establishment provides a written notice to the city council, county
10 council, local health department, and attorney general 180 days
11 before the establishment ceases to be fully operational and open to
12 the public.

13 (2) The notice required by subsection (1) of this section must
14 include both of the following:

15 (a) A written analysis and explanation, including data, of how
16 residents living in the geographic area designated by the United
17 States department of agriculture as a food desert will be able, at
18 comparable costs, including transportation costs, time off work, and
19 child care costs, to purchase food after the establishment ceases
20 being fully operational and open to the public; and

21 (b) A profit and loss statement for the establishment consistent
22 with generally accepted accounting principles for the two years prior
23 to the merger attested to by a responsible officer of the successor
24 employer.

25 NEW SECTION. **Sec. 11.** (1) This chapter does not apply to an
26 incumbent grocery employer and the successor grocery employer
27 executing the transfer document with that incumbent grocery employer,
28 if the sum of both of the following is less than 300:

29 (a) The number of grocery workers employed immediately prior to
30 the change in control by the incumbent grocery employer across that
31 employer's grocery establishments nationwide; and

32 (b) The number of grocery workers employed immediately prior to
33 the change in control by the successor grocery employer across that
34 employer's grocery establishments nationwide.

35 (2) For purposes of this section only, the following definitions
36 apply:

1 (a) "Grocery establishment," as used in this section, has the
2 same meaning as defined in section 2 of this act, but also includes
3 grocery establishments in other states in the United States.

4 (b) "Grocery worker," as used in this section, means any
5 individual whose primary place of employment is at a grocery
6 establishment that is owned, controlled, or operated by the incumbent
7 or successor grocery employer, as applicable.

8 NEW SECTION. **Sec. 12.** This chapter is not to be construed to
9 limit an eligible grocery worker's right to bring legal action for
10 wrongful termination.

11 NEW SECTION. **Sec. 13.** This chapter does not preempt any city,
12 county, or city and county ordinances that provide equal or greater
13 protection to eligible grocery workers.

14 NEW SECTION. **Sec. 14.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 **Sec. 15.** RCW 49.48.082 and 2010 c 42 s 1 are each reenacted and
19 amended to read as follows:

20 The definitions in this section apply throughout this section and
21 RCW 49.48.083 through 49.48.086:

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

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

25 (3) "Determination of compliance" means a written determination
26 by the department that wage payment requirements have not been
27 violated.

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

30 (5) "Employee" has the meaning provided in: (a) RCW 49.46.010 for
31 purposes of a wage payment requirement set forth in RCW 49.46.020 or
32 49.46.130; and (b) RCW 49.12.005 for purposes of a wage payment
33 requirement set forth in RCW 49.48.010, 49.52.050, or 49.52.060.

34 (6) "Employer" has the meaning provided in RCW 49.46.010 for
35 purposes of a wage payment requirement set forth in RCW 49.46.020,
36 49.46.130, 49.48.010, 49.52.050, or 49.52.060.

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

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

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

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

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

18 (12) "Wage payment requirement" means a wage payment requirement
19 set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, (~~or~~)
20 49.52.060, or section 8 of this act, and any related rules adopted by
21 the department.

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

26 NEW SECTION. **Sec. 16.** Sections 1 through 14 of this act
27 constitute a new chapter in Title 49 RCW.

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