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**SUBSTITUTE SENATE BILL 5583**

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**State of Washington**

**56th Legislature**

**1999 Regular Session**

**By** Senate Committee on Labor & Workforce Development (originally sponsored by Senators Franklin, Fairley and Kline)

Read first time 02/16/1999.

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

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

5       NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS. The legislature finds  
6 that part-time, temporary, leased, and other contingent workers are  
7 increasing in numbers. Under state laws and employer policies, these  
8 contingent workers are less likely than other workers to receive  
9 employment-based benefits. Consequently, employers may terminate  
10 employees, misclassify employees, limit contract terms, or take other  
11 action solely to avoid providing or continuing to provide employment-  
12 based benefits.

13       NEW SECTION. **Sec. 2.** LEGISLATIVE INTENT. The legislature intends  
14 that the purpose of this act is to prohibit employers from terminating  
15 employees, misclassifying employees, limiting their contracts, or  
16 taking other action solely to avoid providing or continuing to provide  
17 employment-based benefits to which employees are entitled under state  
18 law or employer policies. It is not the intent of the legislature that

1 this act relate to or affect employment-based benefits subject to the  
2 federal employee retirement income security act.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.44 RCW  
4 to read as follows:

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

6 (a) Terminate any employee solely to avoid providing or continuing  
7 to provide employment-based benefits to which the employee would become  
8 or is entitled under any state law or any employer policy;

9 (b) Misclassify any employee with the intent to avoid providing or  
10 continuing to provide employment-based benefits to which the employee  
11 would become or is entitled under any state law or any employer policy;

12 (c) Limit the term of a contract with an employee with the intent  
13 to avoid providing employment-based benefits to which the employee  
14 would become entitled under any state law or any employer policy;

15 (d) Include any other language in a contract with an employee that  
16 requires the employee to forego employment-based benefits to which the  
17 employee would become or is entitled under any state law or any  
18 employer policy; or

19 (e) Terminate or in any manner discriminate against an employee  
20 because the employee has filed or communicated to the employer an  
21 intent to file an action alleging a violation of this subsection.

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

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

28 (b) "Employer" means: (i) Any person, firm, corporation,  
29 partnership, business trust, legal representative or other business  
30 entity which engages in any business, industry, profession, or  
31 activity; (ii) any unit of local government including, but not limited  
32 to, a county, city, town, municipal corporation, quasi-municipal  
33 corporation, or political subdivision; and (iii) the state, state  
34 institutions, and state agencies.

35 (c) "Employment-based benefits" means any benefits to which an  
36 employee may become or is entitled under any state law or any employer  
37 policy.

1 (3) Any employee deeming himself or herself terminated or otherwise  
2 harmed in violation of subsection (1) of this section may bring a civil  
3 action in a court of competent jurisdiction. If the employee prevails,  
4 he or she shall be awarded:

5 (a) Either six months' wages or treble the actual damages sustained  
6 by the employee as a result of being terminated or otherwise harmed in  
7 violation of subsection (1) of this section, whichever is greater;

8 (b) Costs of suit or arbitration; and

9 (c) Reasonable attorneys' fees.

10 NEW SECTION. **Sec. 4.** This act shall be construed liberally for  
11 the accomplishment of the purposes thereof.

12 NEW SECTION. **Sec. 5.** If any provision of this act or its  
13 application to any person or circumstance is held invalid, the  
14 remainder of the act or the application of the provision to other  
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 6.** Captions used in this act are not any part  
17 of the law.

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