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SENATE BILL 5692

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State of Washington

56th Legislature

1999 Regular Session

By Senator Fairley

Read first time 02/03/1999. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to the employment of legislative and other public  
2 employees; amending RCW 41.06.070, 41.40.023, 41.60.010, 42.40.020,  
3 49.12.005, 49.12.360, and 49.46.010; and adding a new section to  
4 chapter 41.06 RCW.

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

6 **Sec. 1.** RCW 41.06.070 and 1998 c 245 s 40 are each amended to read  
7 as follows:

8 (1) The provisions of this chapter do not apply to:

9 (a) The members of the legislature (~~or to any employee of, or~~  
10 ~~position in, the legislative branch of the state government including~~  
11 ~~members, officers, and employees of the legislative council, joint~~  
12 ~~legislative audit and review committee, statute law committee, and any~~  
13 ~~interim committee of the legislature));~~

14 (b) The justices of the supreme court, judges of the court of  
15 appeals, judges of the superior courts or of the inferior courts, or to  
16 any employee of, or position in the judicial branch of state  
17 government;

18 (c) Officers, academic personnel, and employees of technical  
19 colleges;

1 (d) The officers of the Washington state patrol;

2 (e) Elective officers of the state;

3 (f) The chief executive officer of each agency;

4 (g) In the departments of employment security and social and health  
5 services, the director and the director's confidential secretary; in  
6 all other departments, the executive head of which is an individual  
7 appointed by the governor, the director, his or her confidential  
8 secretary, and his or her statutory assistant directors;

9 (h) In the case of a multimember board, commission, or committee,  
10 whether the members thereof are elected, appointed by the governor or  
11 other authority, serve ex officio, or are otherwise chosen:

12 (i) All members of such boards, commissions, or committees;

13 (ii) If the members of the board, commission, or committee serve on  
14 a part-time basis and there is a statutory executive officer: The  
15 secretary of the board, commission, or committee; the chief executive  
16 officer of the board, commission, or committee; and the confidential  
17 secretary of the chief executive officer of the board, commission, or  
18 committee;

19 (iii) If the members of the board, commission, or committee serve  
20 on a full-time basis: The chief executive officer or administrative  
21 officer as designated by the board, commission, or committee; and a  
22 confidential secretary to the chair of the board, commission, or  
23 committee;

24 (iv) If all members of the board, commission, or committee serve ex  
25 officio: The chief executive officer; and the confidential secretary  
26 of such chief executive officer;

27 (i) The confidential secretaries and administrative assistants in  
28 the immediate offices of the elective officers of the state, except  
29 legislators;

30 (j) Assistant attorneys general;

31 (k) Commissioned and enlisted personnel in the military service of  
32 the state;

33 (l) Inmate, student, part-time, or temporary employees, and part-  
34 time professional consultants, as defined by the Washington personnel  
35 resources board;

36 (m) The public printer or to any employees of or positions in the  
37 state printing plant;

38 (n) Officers and employees of the Washington state fruit  
39 commission;

1 (o) Officers and employees of the Washington state apple  
2 advertising commission;

3 (p) Officers and employees of the Washington state dairy products  
4 commission;

5 (q) Officers and employees of the Washington tree fruit research  
6 commission;

7 (r) Officers and employees of the Washington state beef commission;

8 (s) Officers and employees of any commission formed under chapter  
9 15.66 RCW;

10 ~~(t) ((Officers and employees of the state wheat commission formed  
11 under chapter 15.63 RCW;~~

12 ~~(u))~~ (u) Officers and employees of agricultural commissions formed  
13 under chapter 15.65 RCW;

14 ~~((v))~~ (v) Officers and employees of the nonprofit corporation  
15 formed under chapter 67.40 RCW;

16 ~~((w))~~ (w) Executive assistants for personnel administration and  
17 labor relations in all state agencies employing such executive  
18 assistants including but not limited to all departments, offices,  
19 commissions, committees, boards, or other bodies subject to the  
20 provisions of this chapter and this subsection shall prevail over any  
21 provision of law inconsistent herewith unless specific exception is  
22 made in such law;

23 ~~((x))~~ (x) In each agency with fifty or more employees: Deputy  
24 agency heads, assistant directors or division directors, and not more  
25 than three principal policy assistants who report directly to the  
26 agency head or deputy agency heads;

27 ~~((y))~~ (y) All employees of the marine employees' commission;

28 ~~((z) Up to a total of five senior staff positions of the western  
29 library network under chapter 27.26 RCW responsible for formulating  
30 policy or for directing program management of a major administrative  
31 unit. This subsection (1)(z) shall expire on June 30, 1997;~~

32 ~~(aa))~~ (y) Staff employed by the department of community, trade,  
33 and economic development to administer energy policy functions and  
34 manage energy site evaluation council activities under RCW  
35 43.21F.045(2)(m);

36 ~~((bb))~~ (z) Staff employed by Washington State University to  
37 administer energy education, applied research, and technology transfer  
38 programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

1 (2) The following classifications, positions, and employees of  
2 institutions of higher education and related boards are hereby exempted  
3 from coverage of this chapter:

4 (a) Members of the governing board of each institution of higher  
5 education and related boards, all presidents, vice-presidents, and  
6 their confidential secretaries, administrative, and personal  
7 assistants; deans, directors, and chairs; academic personnel; and  
8 executive heads of major administrative or academic divisions employed  
9 by institutions of higher education; principal assistants to executive  
10 heads of major administrative or academic divisions; other managerial  
11 or professional employees in an institution or related board having  
12 substantial responsibility for directing or controlling program  
13 operations and accountable for allocation of resources and program  
14 results, or for the formulation of institutional policy, or for  
15 carrying out personnel administration or labor relations functions,  
16 legislative relations, public information, development, senior computer  
17 systems and network programming, or internal audits and investigations;  
18 and any employee of a community college district whose place of work is  
19 one which is physically located outside the state of Washington and who  
20 is employed pursuant to RCW 28B.50.092 and assigned to an educational  
21 program operating outside of the state of Washington;

22 ~~(b) ((Student, part-time, or temporary employees, and part-time  
23 professional consultants, as defined by the Washington personnel  
24 resources board, employed by institutions of higher education and  
25 related boards;~~

26 ~~(c))~~ The governing board of each institution, and related boards,  
27 may also exempt from this chapter classifications involving research  
28 activities, counseling of students, extension or continuing education  
29 activities, graphic arts or publications activities requiring  
30 prescribed academic preparation or special training as determined by  
31 the board: PROVIDED, That no nonacademic employee engaged in office,  
32 clerical, maintenance, or food and trade services may be exempted by  
33 the board under this provision;

34 ~~((d))~~ (c) Printing craft employees in the department of printing  
35 at the University of Washington.

36 (3) In addition to the exemptions specifically provided by this  
37 chapter, the Washington personnel resources board may provide for  
38 further exemptions pursuant to the following procedures. The governor  
39 or other appropriate elected official may submit requests for exemption

1 to the Washington personnel resources board stating the reasons for  
2 requesting such exemptions. The Washington personnel resources board  
3 shall hold a public hearing, after proper notice, on requests submitted  
4 pursuant to this subsection. If the board determines that the position  
5 for which exemption is requested is one involving substantial  
6 responsibility for the formulation of basic agency or executive policy  
7 or one involving directing and controlling program operations of an  
8 agency or a major administrative division thereof, the Washington  
9 personnel resources board shall grant the request and such  
10 determination shall be final as to any decision made before July 1,  
11 1993. The total number of additional exemptions permitted under this  
12 subsection shall not exceed one percent of the number of employees in  
13 the classified service not including employees of institutions of  
14 higher education and related boards for those agencies not directly  
15 under the authority of any elected public official other than the  
16 governor, and shall not exceed a total of twenty-five for all agencies  
17 under the authority of elected public officials other than the  
18 governor.

19 The salary and fringe benefits of all positions presently or  
20 hereafter exempted except for the chief executive officer of each  
21 agency, full-time members of boards and commissions, administrative  
22 assistants and confidential secretaries in the immediate office of an  
23 elected state official, and the personnel listed in subsections (1)(j)  
24 through ~~((v))~~ (u), ~~((y), (z))~~ (x), and (2) of this section, shall  
25 be determined by the Washington personnel resources board. However,  
26 beginning with changes proposed for the 1997-99 fiscal biennium,  
27 changes to the classification plan affecting exempt salaries must meet  
28 the same provisions for classified salary increases resulting from  
29 adjustments to the classification plan as outlined in RCW 41.06.152.

30 Any person holding a classified position subject to the provisions  
31 of this chapter shall, when and if such position is subsequently  
32 exempted from the application of this chapter, be afforded the  
33 following rights: If such person previously held permanent status in  
34 another classified position, such person shall have a right of  
35 reversion to the highest class of position previously held, or to a  
36 position of similar nature and salary.

37 Any classified employee having civil service status in a classified  
38 position who accepts an appointment in an exempt position shall have

1 the right of reversion to the highest class of position previously  
2 held, or to a position of similar nature and salary.

3 A person occupying an exempt position who is terminated from the  
4 position for gross misconduct or malfeasance does not have the right of  
5 reversion to a classified position as provided for in this section.

6 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.06 RCW  
7 to read as follows:

8 (1) The director shall, after consultation with legislative  
9 agencies and affected employees, provide some or all rules for  
10 confidential secretaries and administrative assistants that are  
11 separate from the rules adopted for other employees. The rules must  
12 address at least the following: Recruitment, appointments,  
13 examinations, a classification plan, disciplinary procedures, overtime  
14 compensation for employees covered under the rules who are exempt from  
15 state and federal wage and hour laws, and a salary schedule. To the  
16 extent that these rules apply only to legislative employees, these  
17 rules take precedence over rules adopted by the board and are not  
18 subject to review by the board.

19 (2) Rules adopted under this chapter shall provide for local  
20 administration and management by legislative agencies.

21 (3) Each legislative agency must designate an officer who shall  
22 perform duties as personnel officer. The personnel officer shall  
23 direct, supervise, and manage administrative and technical personnel  
24 activities for the classified service at the legislative agency  
25 consistent with policies established by the legislative agency and in  
26 accordance with this chapter and the rules adopted under this chapter.  
27 Legislative agencies may undertake jointly with one or more other  
28 legislative agencies to appoint a person qualified to perform the  
29 duties of personnel officer and provide staff and financial support,  
30 and may engage consultants to assist in the performance of specific  
31 projects. The services of the department of personnel may also be used  
32 pursuant to RCW 41.06.080.

33 **Sec. 3.** RCW 41.40.023 and 1997 c 254 s 11 are each amended to read  
34 as follows:

35 Membership in the retirement system shall consist of all regularly  
36 compensated employees and appointive and elective officials of  
37 employers, as defined in this chapter, with the following exceptions:

1 (1) Persons in ineligible positions;

2 (2) (~~Employees of the legislature except the officers thereof~~  
3 ~~elected by the members of the senate and the house and legislative~~  
4 ~~committees, unless membership of such employees be authorized by the~~  
5 ~~said committee;~~

6 (+3)) (a) Persons holding elective offices or persons appointed  
7 directly by the governor: PROVIDED, That such persons shall have the  
8 option of applying for membership during such periods of employment:  
9 AND PROVIDED FURTHER, That any persons holding or who have held  
10 elective offices or persons appointed by the governor who are members  
11 in the retirement system and who have, prior to becoming such members,  
12 previously held an elective office, and did not at the start of such  
13 initial or successive terms of office exercise their option to become  
14 members, may apply for membership to be effective during such term or  
15 terms of office, and shall be allowed to establish the service credit  
16 applicable to such term or terms of office upon payment of the employee  
17 contributions therefor by the employee with interest as determined by  
18 the director and employer contributions therefor by the employer or  
19 employee with interest as determined by the director: AND PROVIDED  
20 FURTHER, That all contributions with interest submitted by the employee  
21 under this subsection shall be placed in the employee's individual  
22 account in the employee's savings fund and be treated as any other  
23 contribution made by the employee, with the exception that any  
24 contributions submitted by the employee in payment of the employer's  
25 obligation, together with the interest the director may apply to the  
26 employer's contribution, shall not be considered part of the member's  
27 annuity for any purpose except withdrawal of contributions;

28 (b) A member holding elective office who has elected to apply for  
29 membership pursuant to (a) of this subsection and who later wishes to  
30 be eligible for a retirement allowance shall have the option of ending  
31 his or her membership in the retirement system. A member wishing to  
32 end his or her membership under this subsection must file, on a form  
33 supplied by the department, a statement indicating that the member  
34 agrees to irrevocably abandon any claim for service for future periods  
35 served as an elected official. A member who receives more than fifteen  
36 thousand dollars per year in compensation for his or her elective  
37 service, adjusted annually for inflation by the director, is not  
38 eligible for the option provided by this subsection ((+3)) (2)(b);

1       (~~(4)~~) (3) Employees holding membership in, or receiving pension  
2 benefits under, any retirement plan operated wholly or in part by an  
3 agency of the state or political subdivision thereof, or who are by  
4 reason of their current employment contributing to or otherwise  
5 establishing the right to receive benefits from any such retirement  
6 plan: PROVIDED, HOWEVER, In any case where the retirement system has  
7 in existence an agreement with another retirement system in connection  
8 with exchange of service credit or an agreement whereby members can  
9 retain service credit in more than one system, such an employee shall  
10 be allowed membership rights should the agreement so provide: AND  
11 PROVIDED FURTHER, That an employee shall be allowed membership if  
12 otherwise eligible while receiving survivor's benefits: AND PROVIDED  
13 FURTHER, That an employee shall not either before or after June 7,  
14 1984, be excluded from membership or denied service credit pursuant to  
15 this subsection solely on account of: (a) Membership in the plan  
16 created under chapter 2.14 RCW; or (b) enrollment under the relief and  
17 compensation provisions or the pension provisions of the volunteer fire  
18 fighters' relief and pension fund under chapter 41.24 RCW;

19       (~~(5)~~) (4) Patient and inmate help in state charitable, penal, and  
20 correctional institutions;

21       (~~(6)~~) (5) "Members" of a state veterans' home or state soldiers'  
22 home;

23       (~~(7)~~) (6) Persons employed by an institution of higher learning  
24 or community college, primarily as an incident to and in furtherance of  
25 their education or training, or the education or training of a spouse;

26       (~~(8)~~) (7) Employees of an institution of higher learning or  
27 community college during the period of service necessary to establish  
28 eligibility for membership in the retirement plans operated by such  
29 institutions;

30       (~~(9)~~) (8) Persons rendering professional services to an employer  
31 on a fee, retainer, or contract basis or when the income from these  
32 services is less than fifty percent of the gross income received from  
33 the person's practice of a profession;

34       (~~(10)~~) (9) Persons appointed after April 1, 1963, by the liquor  
35 control board as agency vendors;

36       (~~(11)~~) (10) Employees of a labor guild, association, or  
37 organization: PROVIDED, That elective officials and employees of a  
38 labor guild, association, or organization which qualifies as an



1 employer within this chapter shall have the option of applying for  
2 membership;

3 ~~((12))~~ (11) Retirement system retirees: PROVIDED, That following  
4 reemployment in an eligible position, a retiree may elect to  
5 prospectively become a member of the retirement system if otherwise  
6 eligible;

7 ~~((13))~~ (12) Persons employed by or appointed or elected as an  
8 official of a first class city that has its own retirement system:  
9 PROVIDED, That any member elected or appointed to an elective office on  
10 or after April 1, 1971, shall have the option of continuing as a member  
11 of this system in lieu of becoming a member of the city system. A  
12 member who elects to continue as a member of this system shall pay the  
13 appropriate member contributions and the city shall pay the employer  
14 contributions at the rates prescribed by this chapter. The city shall  
15 also transfer to this system all of such member's accumulated  
16 contributions together with such further amounts as necessary to equal  
17 all employee and employer contributions which would have been paid into  
18 this system on account of such service with the city and thereupon the  
19 member shall be granted credit for all such service. Any city that  
20 becomes an employer as defined in RCW 41.40.010(4) as the result of an  
21 individual's election under this subsection shall not be required to  
22 have all employees covered for retirement under the provisions of this  
23 chapter. Nothing in this subsection shall prohibit a city of the first  
24 class with its own retirement system from: (a) Transferring all of its  
25 current employees to the retirement system established under this  
26 chapter, or (b) allowing newly hired employees the option of continuing  
27 coverage under the retirement system established by this chapter.

28 Notwithstanding any other provision of this chapter, persons  
29 transferring from employment with a first class city of over four  
30 hundred thousand population that has its own retirement system to  
31 employment with the state department of agriculture may elect to remain  
32 within the retirement system of such city and the state shall pay the  
33 employer contributions for such persons at like rates as prescribed for  
34 employers of other members of such system;

35 ~~((14))~~ (13) Employees who (a) are not citizens of the United  
36 States, (b) do not reside in the United States, and (c) perform duties  
37 outside of the United States;

38 ~~((15))~~ (14) Employees who (a) are not citizens of the United  
39 States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded

1 from membership under this chapter or chapter 41.04 RCW, (d) are  
2 residents of this state, and (e) make an irrevocable election to be  
3 excluded from membership, in writing, which is submitted to the  
4 director within thirty days after employment in an eligible position;

5 ~~((16))~~ (15) Employees who are citizens of the United States and  
6 who reside and perform duties for an employer outside of the United  
7 States: PROVIDED, That unless otherwise excluded under this chapter or  
8 chapter 41.04 RCW, the employee may apply for membership (a) within  
9 thirty days after employment in an eligible position and membership  
10 service credit shall be granted from the first day of membership  
11 service, and (b) after this thirty-day period, but membership service  
12 credit shall be granted only if payment is made for the noncredited  
13 membership service under RCW 41.50.165(2), otherwise service shall be  
14 from the date of application;

15 ~~((17))~~ (16) The city manager or chief administrative officer of  
16 a city or town, other than a retiree, who serves at the pleasure of an  
17 appointing authority: PROVIDED, That such persons shall have the  
18 option of applying for membership within thirty days from date of their  
19 appointment to such positions. Persons serving in such positions as of  
20 April 4, 1986, shall continue to be members in the retirement system  
21 unless they notify the director in writing prior to December 31, 1986,  
22 of their desire to withdraw from membership in the retirement system.  
23 A member who withdraws from membership in the system under this section  
24 shall receive a refund of the member's accumulated contributions.

25 Persons serving in such positions who have not opted for membership  
26 within the specified thirty days, may do so by paying the amount  
27 required under RCW 41.50.165(2) for the period from the date of their  
28 appointment to the date of acceptance into membership;

29 ~~((18))~~ (17) Persons enrolled in state-approved apprenticeship  
30 programs, authorized under chapter 49.04 RCW, and who are employed by  
31 local governments to earn hours to complete such apprenticeship  
32 programs, if the employee is a member of a union-sponsored retirement  
33 plan and is making contributions to such a retirement plan or if the  
34 employee is a member of a Taft-Hartley retirement plan.

35 **Sec. 4.** RCW 41.60.010 and 1993 c 467 s 1 are each amended to read  
36 as follows:

37 As used in this chapter:

38 (1) "Board" means the productivity board.

1 (2) "Employee suggestion program" means the program developed by  
2 the board under RCW 41.60.020.

3 (3) "Teamwork incentive program" means the program developed by the  
4 board under RCW 41.60.100 through 41.60.120.

5 (4) "State employees" means (~~(present)~~) employees in state agencies  
6 (~~(and)~~), institutions of higher education, and the legislature, except  
7 for elected officials, directors of such agencies and institutions, and  
8 their confidential secretaries and administrative assistants and others  
9 specifically ruled ineligible by the rules of the productivity board.

10 **Sec. 5.** RCW 42.40.020 and 1995 c 403 s 509 are each amended to  
11 read as follows:

12 As used in this chapter, the terms defined in this section shall  
13 have the meanings indicated unless the context clearly requires  
14 otherwise.

15 (1) "Auditor" means the office of the state auditor.

16 (2) "Employee" means any individual employed or holding office in  
17 any department (~~(or)~~), agency, or branch of state government.

18 (3)(a) "Improper governmental action" means any action by an  
19 employee:

20 (i) Which is undertaken in the performance of the employee's  
21 official duties, whether or not the action is within the scope of the  
22 employee's employment; and

23 (ii) Which is in violation of any state law or rule, is an abuse of  
24 authority, is of substantial and specific danger to the public health  
25 or safety, or is a gross waste of public funds.

26 (b) "Improper governmental action" does not include personnel  
27 actions including but not limited to employee grievances, complaints,  
28 appointments, promotions, transfers, assignments, reassignments,  
29 reinstatements, restorations, reemployments, performance evaluations,  
30 reductions in pay, dismissals, suspensions, demotions, violations of  
31 the state civil service law, alleged labor agreement violations,  
32 reprimands, or any action which may be taken under chapter 41.06 RCW,  
33 or other disciplinary action except as provided in RCW 42.40.030.

34 (4) "Use of official authority or influence" includes taking,  
35 directing others to take, recommending, processing, or approving any  
36 personnel action such as an appointment, promotion, transfer,  
37 assignment, reassignment, reinstatement, restoration, reemployment,

1 performance evaluation, or any adverse action under chapter 41.06 RCW,  
2 or other disciplinary action.

3 (5) "Whistleblower" means an employee who in good faith reports  
4 alleged improper governmental action to the auditor, initiating an  
5 investigation under RCW 42.40.040. For purposes of the provisions of  
6 this chapter and chapter 49.60 RCW relating to reprisals and  
7 retaliatory action, the term "whistleblower" also means: (a) An  
8 employee who in good faith provides information to the auditor in  
9 connection with an investigation under RCW 42.40.040 and an employee  
10 who is believed to have reported alleged improper governmental action  
11 to the auditor or to have provided information to the auditor in  
12 connection with an investigation under RCW 42.40.040 but who, in fact,  
13 has not reported such action or provided such information; or (b) an  
14 employee who in good faith identifies rules warranting review or  
15 provides information to the rules review committee, and an employee who  
16 is believed to have identified rules warranting review or provided  
17 information to the rules review committee but who, in fact, has not  
18 done so.

19 **Sec. 6.** RCW 49.12.005 and 1998 c 334 s 1 are each amended to read  
20 as follows:

21 For the purposes of this chapter:

22 (1) The term "department" means the department of labor and  
23 industries.

24 (2) The term "director" means the director of the department of  
25 labor and industries, or the director's designated representative.

26 (3) The term "employer" means any person, firm, corporation,  
27 partnership, business trust, legal representative, or other business  
28 entity which engages in any business, industry, profession, or activity  
29 in this state and employs one or more employees, and (~~for the purposes~~  
30 ~~of RCW 49.12.270 through 49.12.295 and 49.12.450 also includes~~) the  
31 state, any state institution, any state agency, political subdivisions  
32 of the state, and any municipal corporation or quasi-municipal  
33 corporation.

34 (4) The term "employee" means an employee who is employed in the  
35 business of the employee's employer whether by way of manual labor or  
36 otherwise.

37 (5) The term "conditions of labor" shall mean and include the  
38 conditions of rest and meal periods for employees including provisions

1 for personal privacy, practices, methods and means by or through which  
2 labor or services are performed by employees and includes bona fide  
3 physical qualifications in employment, but shall not include conditions  
4 of labor otherwise governed by statutes and rules and regulations  
5 relating to industrial safety and health administered by the  
6 department.

7 (6) For the purpose of chapter 16, Laws of 1973 2nd ex. sess. a  
8 minor is defined to be a person of either sex under the age of eighteen  
9 years.

10 **Sec. 7.** RCW 49.12.360 and 1989 1st ex.s. c 11 s 23 are each  
11 amended to read as follows:

12 (1) An employer must grant an adoptive parent or a stepparent, at  
13 the time of birth or initial placement for adoption of a child under  
14 the age of six, the same leave under the same terms as the employer  
15 grants to biological parents. As a term of leave, an employer may  
16 restrict leave to those living with the child at the time of birth or  
17 initial placement.

18 (2) An employer must grant the same leave upon the same terms for  
19 men as it does for women.

20 (3) The department shall administer and investigate violations of  
21 this section. Notices of infraction, penalties, and appeals shall be  
22 administered in the same manner as violations under RCW 49.12.285.

23 (4) ~~((For purposes of this section, "employer" includes all private  
24 and public employers listed in RCW 49.12.005(3)).~~

25 ~~(+5))~~ For purposes of this section, "leave" means any leave from  
26 employment granted to care for a newborn or a newly adopted child at  
27 the time of placement for adoption.

28 ~~((+6))~~ (5) Nothing in this section requires an employer to:

29 (a) Grant leave equivalent to maternity disability leave; or

30 (b) Establish a leave policy to care for a newborn or newly placed  
31 child if no such leave policy is in place for any of its employees.

32 **Sec. 8.** RCW 49.46.010 and 1997 c 203 s 3 are each amended to read  
33 as follows:

34 As used in this chapter:

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

36 (2) "Wage" means compensation due to an employee by reason of  
37 employment, payable in legal tender of the United States or checks on

1 banks convertible into cash on demand at full face value, subject to  
2 such deductions, charges, or allowances as may be permitted by rules of  
3 the director;

4 (3) "Employ" includes to permit to work;

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

9 (5) "Employee" includes any individual employed by an employer but  
10 shall not include:

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

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

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

27 (d) Any individual engaged in the activities of an educational,  
28 charitable, religious, state or local governmental body or agency, or  
29 nonprofit organization where the employer-employee relationship does  
30 not in fact exist or where the services are rendered to such  
31 organizations gratuitously. If the individual receives reimbursement  
32 in lieu of compensation for normally incurred out-of-pocket expenses or  
33 receives a nominal amount of compensation per unit of voluntary service  
34 rendered, an employer-employee relationship is deemed not to exist for  
35 the purpose of this section or for purposes of membership or  
36 qualification in any state, local government or publicly supported  
37 retirement system other than that provided under chapter 41.24 RCW;

38 (e) Any individual employed full time by any state or local  
39 governmental body or agency who provides voluntary services but only

1 with regard to the provision of the voluntary services. The voluntary  
2 services and any compensation therefor shall not affect or add to  
3 qualification, entitlement or benefit rights under any state, local  
4 government, or publicly supported retirement system other than that  
5 provided under chapter 41.24 RCW;

6 (f) Any newspaper vendor or carrier;

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

9 (h) Any individual engaged in forest protection and fire prevention  
10 activities;

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

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

20 (k) Any resident, inmate, or patient of a state, county, or  
21 municipal correctional, detention, treatment or rehabilitative  
22 institution;

23 (l) Any individual who holds a public elective or appointive office  
24 of the state, any county, city, town, municipal corporation or quasi  
25 municipal corporation, political subdivision, or any instrumentality  
26 thereof(~~(, or any employee of the state legislature)~~);

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

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

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

34 (7) "Retail or service establishment" means an establishment  
35 seventy-five percent of whose annual dollar volume of sales of goods or  
36 services, or both, is not for resale and is recognized as retail sales  
37 or services in the particular industry.

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