

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 5264**

Chapter 155, Laws of 2002

57th Legislature  
2002 Regular Session

**PUBLIC EMPLOYERS--UNFAIR PRACTICES**

EFFECTIVE DATE: 6/13/02

Passed by the Senate March 12, 2002  
YEAS 45 NAYS 0

BRAD OWEN  
**President of the Senate**

Passed by the House March 8, 2002  
YEAS 96 NAYS 0

FRANK CHOPP  
**Speaker of the  
House of Representatives**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5264** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK  
**Secretary**

Approved March 27, 2002

FILED

March 27, 2002 - 8:35 a.m.

GARY LOCKE  
**Governor of the State of Washington**

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE SENATE BILL 5264**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2002 Regular Session

**State of Washington                      57th Legislature                      2001 Regular Session**

**By** Senate Committee on Ways & Means (originally sponsored by Senators Prentice, Fraser, Patterson, Costa, Shin, Kline, Kohl-Welles, Constantine, Jacobsen, Winsley and Gardner)

READ FIRST TIME 03/08/01.

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

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

5            NEW SECTION.    **Sec. 1.** A new section is added to chapter 49.44 RCW  
6 to read as follows:

7            The legislature intends that public employers be prohibited from  
8 misclassifying employees, or taking other action to avoid providing or  
9 continuing to provide employment-based benefits to which employees are  
10 entitled under state law or employer policies or collective bargaining  
11 agreements applicable to the employee's correct classification.

12           This act does not mandate that any public employer provide benefits  
13 to actual temporary, seasonal, or part-time employees beyond the  
14 benefits to which they are entitled under state law or employer  
15 policies or collective bargaining agreements applicable to the  
16 employee's correct classification. Public employers may determine  
17 eligibility rules for their own benefit plans and may exclude  
18 categories of workers such as "temporary" or "seasonal," so long as the  
19 definitions and eligibility rules are objective and applied on a

1 consistent basis. Objective standards, such as control over the work  
2 and the length of the employment relationship, should determine whether  
3 a person is an employee who is entitled to employee benefits, rather  
4 than the arbitrary application of labels, such as "temporary" or  
5 "contractor." Common law standards should be used to determine whether  
6 a person is performing services as an employee, as a contractor, or as  
7 part of an agency relationship.

8 This act does not modify any statute or policy regarding the  
9 employment of: Public employee retirees who are hired for  
10 postretirement employment as provided for in chapter 41.26, 41.32,  
11 41.35, or 41.40 RCW or who work as contractors; or enrolled students  
12 who receive employment as student employees or as part of their  
13 education or financial aid.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.44 RCW  
15 to read as follows:

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

17 (a) Misclassify any employee to avoid providing or continuing to  
18 provide employment-based benefits; or

19 (b) Include any other language in a contract with an employee that  
20 requires the employee to forgo employment-based benefits.

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

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

27 (b) "Employment-based benefits" means any benefits to which  
28 employees are entitled under state law or employer policies or  
29 collective bargaining agreements applicable to the employee's correct  
30 classification.

31 (c) "Public employer" means: (i) Any unit of local government  
32 including, but not limited to, a county, city, town, municipal  
33 corporation, quasi-municipal corporation, or political subdivision; and  
34 (ii) the state, state institutions, and state agencies. This  
35 definition shall be interpreted consistent with common law.

36 (d) "Misclassify" and "misclassification" means to incorrectly  
37 classify or label a long-term public employee as "temporary," "leased,"  
38 "contract," "seasonal," "intermittent," or "part-time," or to use a

1 similar label that does not objectively describe the employee's actual  
2 work circumstances.

3 (3) An employee deeming himself or herself harmed in violation of  
4 subsection (1) of this section may bring a civil action in a court of  
5 competent jurisdiction.

6 NEW SECTION. **Sec. 3.** This act shall be construed liberally for  
7 the accomplishment of its purposes.

8 NEW SECTION. **Sec. 4.** If any provision of this act or its  
9 application to any person or circumstance is held invalid, the  
10 remainder of the act or the application of the provision to other  
11 persons or circumstances is not affected.

Passed the Senate March 12, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.