

SSB 6054 - H COMM AMD
By Committee on Appropriations

ADOPTED 04/24/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the enactment of
4 chapter 236, Laws of 1988 amended the definition of employer under the
5 industrial welfare act, chapter 49.12 RCW, to ensure that the family
6 care provisions of that act applied to the state and political
7 subdivisions. The legislature further finds that this amendment of the
8 definition of employer may be interpreted as creating an ambiguity as
9 to whether the other provisions of chapter 49.12 RCW have applied to
10 the state and its political subdivisions. The purpose of this act is
11 to make retroactive, remedial, curative, and technical amendments to
12 clarify the intent of chapter 49.12 RCW and chapter 236, Laws of 1988
13 and resolve any ambiguity. It is the intent of the legislature to
14 establish that, prior to the effective date of this act, chapter 49.12
15 RCW and the rules adopted thereunder did not apply to the state or its
16 agencies and political subdivisions except as expressly provided for in
17 RCW 49.12.265 through 49.12.295, 49.12.350 through 49.12.370,
18 49.12.450, and 49.12.460.

19 **Sec. 2.** 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~~) (a) Before the effective date of this act,
27 "employer" means any person, firm, corporation, partnership, business
28 trust, legal representative, or other business entity which engages in
29 any business, industry, profession, or activity in this state and

1 employs one or more employees (~~and~~) but does not include the state,
2 any state institution, any state agency, political subdivision of the
3 state, or any municipal corporation or quasi-municipal corporation.
4 However, for the purposes of RCW (~~49.12.270~~) 49.12.265 through
5 49.12.295 (~~and~~), 49.12.350 through 49.12.370, 49.12.450, and
6 49.12.460 only, "employer" also includes the state, any state
7 institution, any state agency, political subdivisions of the state, and
8 any municipal corporation or quasi-municipal corporation.

9 (b) On and after the effective date of this act, "employer" means
10 any person, firm, corporation, partnership, business trust, legal
11 representative, or other business entity which engages in any business,
12 industry, profession, or activity in this state and employs one or more
13 employees, and includes the state, any state institution, state agency,
14 political subdivisions of the state, and any municipal corporation or
15 quasi-municipal corporation. However, this chapter and the rules
16 adopted thereunder apply to these public employers only to the extent
17 that this chapter and the rules adopted thereunder do not conflict
18 with: (i) Any state statute or rule; and (ii) respect to political
19 subdivisions of the state and any municipal or quasi-municipal
20 corporation, any local resolution, ordinance, or rule adopted under the
21 authority of the local legislative authority before April 1, 2003.

22 (4) (~~The term~~) "Employee" means an employee who is employed in
23 the business of the employee's employer whether by way of manual labor
24 or otherwise.

25 (5) (~~The term~~) "Conditions of labor" (~~shall~~) means and includes
26 the conditions of rest and meal periods for employees including
27 provisions for personal privacy, practices, methods and means by or
28 through which labor or services are performed by employees and includes
29 bona fide physical qualifications in employment, but shall not include
30 conditions of labor otherwise governed by statutes and rules and
31 regulations relating to industrial safety and health administered by
32 the department.

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

1 **Sec. 3.** RCW 49.12.187 and 1973 2nd ex.s. c 16 s 18 are each
2 amended to read as follows:

3 This chapter shall not be construed to interfere with, impede, or
4 in any way diminish the right of employees to bargain collectively with
5 their employers through representatives of their own choosing
6 concerning wages or standards or conditions of employment.

7 Employees of public employers may enter into collective bargaining
8 contracts, labor/management agreements, or other mutually agreed to
9 employment agreements that specifically vary from or supersede, in part
10 or in total, rules adopted under this chapter regarding appropriate
11 rest and meal periods.

12 **Sec. 4.** RCW 49.12.360 and 1989 1st ex.s. c 11 s 23 are each
13 amended to read as follows:

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

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

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

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

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

30 ~~((6))~~ (5) Nothing in this section requires an employer to:

- 31 (a) Grant leave equivalent to maternity disability leave; or
32 (b) Establish a leave policy to care for a newborn or newly placed
33 child if no such leave policy is in place for any of its employees.

34 **Sec. 5.** RCW 49.12.460 and 2001 c 173 s 1 are each amended to read
35 as follows:

1 (1) An employer may not discharge from employment or discipline a
2 volunteer fire fighter because of leave taken related to an alarm of
3 fire or an emergency call.

4 (2)(a) A volunteer fire fighter who believes he or she was
5 discharged or disciplined in violation of this section may file a
6 complaint alleging the violation with the director. The volunteer fire
7 fighter may allege a violation only by filing such a complaint within
8 ninety days of the alleged violation.

9 (b) Upon receipt of the complaint, the director must cause an
10 investigation to be made as the director deems appropriate and must
11 determine whether this section has been violated. Notice of the
12 director's determination must be sent to the complainant and the
13 employer within ninety days of receipt of the complaint.

14 (c) If the director determines that this section was violated and
15 the employer fails to reinstate the employee or withdraw the
16 disciplinary action taken against the employee, whichever is
17 applicable, within thirty days of receipt of notice of the director's
18 determination, the volunteer fire fighter may bring an action against
19 the employer alleging a violation of this section and seeking
20 reinstatement or withdrawal of the disciplinary action.

21 (d) In any action brought under this section, the superior court
22 shall have jurisdiction, for cause shown, to restrain violations under
23 this section and to order reinstatement of the employee or withdrawal
24 of the disciplinary action.

25 (3) For the purposes of this section:

26 (a) "Alarm of fire or emergency call" means responding to, working
27 at, or returning from a fire alarm or an emergency call, but not
28 participating in training or other nonemergency activities.

29 (b) "Employer" means (~~any person~~) an employer who had twenty or
30 more full-time equivalent employees in the previous year.

31 (c) "Reinstatement" means reinstatement with back pay, without loss
32 of seniority or benefits, and with removal of any related adverse
33 material from the employee's personnel file, if a file is maintained by
34 the employer.

35 (d) "Withdrawal of disciplinary action" means withdrawal of
36 disciplinary action with back pay, without loss of seniority or

1 benefits, and with removal of any related adverse material from the
2 employee's personnel file, if a file is maintained by the employer.

- 3 (e) "Volunteer fire fighter" means a fire fighter who:
4 (i) Is not paid;
5 (ii) Is not already at his or her place of employment when called
6 to serve as a volunteer, unless the employer agrees to provide such an
7 accommodation; and
8 (iii) Has been ordered to remain at his or her position by the
9 commanding authority at the scene of the fire.

10 (4) The legislature declares that the public policies articulated
11 in this section depend on the procedures established in this section
12 and no civil or criminal action may be maintained relying on the public
13 policies articulated in this section without complying with the
14 procedures set forth in this section, and to that end all civil actions
15 and civil causes of action for such injuries and all jurisdiction of
16 the courts of this state over such causes are hereby abolished, except
17 as provided in this section.

18 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
19 preservation of the public peace, health, or safety, or support of the
20 state government and its existing public institutions, and takes effect
21 immediately."

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22 On page 1, line 2 of the title, after "employers;" strike the
23 remainder of the title and insert "amending RCW 49.12.005, 49.12.187,
24 49.12.360, and 49.12.460; creating a new section; and declaring an
25 emergency."

EFFECT: The amendment: (1) extends Industrial Welfare Act (IWA)

coverage to the public sector except to the extent another statute or rule conflicts and, for local government employers, except to the extent that the IWA conflicts with local ordinances or rules adopted prior to April 1, 2003; (2) allows public employees to enter into collective bargaining contracts, labor/management agreements, or other types of employment agreements that vary from or supersede the rest and meal break rules adopted under the IWA; and (3) makes technical changes so that various other references in the IWA to "public employer" are consistent.

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