
SUBSTITUTE SENATE BILL 5462

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Commerce & Trade (originally sponsored by Senators Mulliken, Honeyford, Hale, Hewitt, T. Sheldon, Swecker and McCaslin)

READ FIRST TIME 02/27/03.

1 AN ACT Relating to the provision of greater predictability and
2 consistency in the state wage and hour laws; amending RCW 49.46.005,
3 49.46.040, 49.46.100, and 49.48.040; adding new sections to chapter
4 49.46 RCW; adding new sections to chapter 49.48 RCW; and prescribing
5 penalties.

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

7 **Sec. 1.** RCW 49.46.005 and 1961 ex.s. c 18 s 1 are each amended to
8 read as follows:

9 ((Whereas)) The establishment of a minimum wage for employees is a
10 subject of vital and imminent concern to the people of this state and
11 requires appropriate action by the legislature to establish minimum
12 standards of employment within the state of Washington((,)) consistent
13 with the standards established in the federal fair labor standards act
14 unless the legislature has expressly established a different standard.
15 Therefore the legislature ((declares that in its considered judgment
16 the health, safety and the general welfare of the citizens of this
17 state require the enactment of this measure, and exercising its police
18 power, the legislature endeavors by)), under this chapter ((to)),
19 establishes a minimum wage and other conditions of employment for

1 employees of this state, consistent with requirements of the federal
2 fair labor standards act unless the legislature has enacted an
3 expressly different requirement, to encourage employment opportunities
4 within the state. The provisions of this chapter are enacted in the
5 exercise of the police power of the state for the purpose of protecting
6 the immediate and future health, safety and welfare of the people of
7 this state.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.46 RCW
9 to read as follows:

10 All terms, provisions, rights, and obligations in this chapter
11 shall be given the same meaning as given to comparable terms,
12 provisions, rights, and obligations under federal law, 29 U.S.C. Secs.
13 202 through 262, and the regulations and statements of general policy
14 and interpretation applying and interpreting those terms issued by the
15 United States department of labor. In the absence of any term,
16 provision, right, or obligation in this chapter contained in federal
17 law, 29 U.S.C. Secs. 202 through 262, or in the regulations and
18 statements of general policy and interpretation applying and
19 interpreting those terms issued by the United States department of
20 labor, then such federal provisions shall control in any action arising
21 under this chapter. However, this section shall not apply to the
22 extent any term or provision of this chapter, or any formal rule
23 adopted by the department of labor and industries interpreting and
24 applying this chapter, is expressly contrary to the comparable
25 provision of federal law, 29 U.S.C. Secs. 202 through 262, or in the
26 regulations and statements of general policy and interpretation
27 applying and interpreting those terms issued by the United States
28 department of labor.

29 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.46 RCW
30 to read as follows:

31 (1) An employer found to have violated a provision requiring
32 payment of wages under this chapter in a citation or notice of
33 assessment issued by the director of labor and industries or the
34 director's authorized representative: Must pay any wages due to the
35 employee and may be assessed a civil penalty of not less than one
36 hundred dollars and not more than one thousand dollars per employee who

1 is owed wages. The department shall not impose more than one civil
2 penalty per employee who is owed wages regardless of the duration of
3 the violation or number of provisions violated. A subsequent civil
4 penalty may be issued for a repeat violation that follows the
5 exhaustion of appeals by the employer for a first violation.

6 (2) The director of labor and industries may waive collection of a
7 portion or all of the penalties assessed under this chapter in favor of
8 the full payment of wages owed to the employee if the violation is
9 inadvertent, infrequent, or de minimus. Additionally, the department
10 shall not assess the penalty if it finds a violation to be inadvertent,
11 infrequent, or de minimus, the employer reimburses the employee, and
12 the employer promises to comply in the future.

13 (3) The director of labor and industries, or the director's
14 authorized representative, may require payment of unpaid wages and may
15 assess all civil penalties authorized by this section. When
16 considering the amount of penalties for multiple violations found in a
17 citation and notice of assessment, the director, or the director's
18 authorized representative, may consider the appropriateness of the
19 penalty with respect to the number of affected employees of the
20 employer being charged for each violation, the gravity of the
21 violations, the duration of the violations, the size of the employer's
22 business, the good faith of the employer, the history of previous
23 violations, and other relevant factors.

24 (4) Civil penalties imposed under this chapter shall be paid to the
25 director of labor and industries for deposit in the employment
26 standards enforcement account established under section 11 of this act.
27 The department shall use these funds exclusively for the employment
28 standards program.

29 (5) The employer shall pay wages and the civil penalty amount
30 assessed under this section within thirty days of receipt of the
31 assessment or notify the director of his or her intent to appeal the
32 citation or the assessment penalty as provided in section 7 of this
33 act.

34 **Sec. 4.** RCW 49.46.040 and 1959 c 294 s 4 are each amended to read
35 as follows:

36 (1) The director or his designated representatives may investigate
37 and gather data regarding the wages, hours, and other conditions and

1 practices of employment in any industry subject to this chapter, and
2 may enter and inspect such places and such records (and make such
3 transcriptions thereof), question such employees, and investigate such
4 facts, conditions, practices, or matters as he may deem necessary or
5 appropriate to determine whether any person has violated any provision
6 of this chapter, or which may aid in the enforcement of the provisions
7 of this chapter. The director or the director's authorized
8 representative shall notify the employer before conducting the
9 investigation. Before conducting an inspection, the department must
10 notify the person whose premises and records are being inspected that
11 he or she has the right to refuse the inspection.

12 (2) With the consent and cooperation of federal agencies charged
13 with the administration of federal labor laws, the director may, for
14 the purpose of carrying out his functions and duties under this
15 chapter, utilize the services of federal agencies and their employees
16 and, notwithstanding any other provision of law, may reimburse such
17 federal agencies and their employees for services rendered for such
18 purposes.

19 (3) Every employer subject to any provision of this chapter or of
20 any order issued under this chapter shall make, keep, and preserve such
21 records of the persons employed by him and of the wages, hours, and
22 other conditions and practices of employment maintained by him, and
23 shall preserve such records for such periods of time, and shall make
24 reports therefrom to the director as he shall prescribe by regulation
25 as necessary or appropriate for the enforcement of the provisions of
26 this chapter or the regulations thereunder.

27 (4) The director is authorized to make such regulations regulating,
28 restricting, or prohibiting industrial homework as are necessary or
29 appropriate to prevent the circumvention or evasion of and to safeguard
30 the minimum wage rate prescribed in this chapter, and all existing
31 regulations of the director relating to industrial homework are hereby
32 continued in full force and effect.

33 **Sec. 5.** RCW 49.46.100 and 1959 c 294 s 10 are each amended to read
34 as follows:

35 (1) Any employer who has received notice of an investigation
36 authorized under this chapter and who hinders or delays the director or
37 (~~his~~) the director's authorized representatives in the performance of

1 ((his)) the director's duties in the enforcement of this chapter, (~~or~~
2 ~~refuses to admit the director or his authorized representatives to any~~
3 ~~place of employment,~~) or fails to make, keep, and preserve any records
4 as required under the provisions of this chapter, or falsifies any such
5 record, or refuses to make any record accessible to the director or
6 ((his)) the director's authorized representatives upon demand, or
7 refuses to furnish a sworn statement of such record or any other
8 information required for the proper enforcement of this chapter to the
9 director or ((his)) the director's authorized representatives upon
10 demand, or pays or agrees to pay wages at a rate less than the rate
11 applicable under this chapter, or otherwise violates any provision of
12 this chapter or of any regulation issued under this chapter shall be
13 deemed in violation of this chapter and shall, upon conviction
14 therefor, be guilty of a gross misdemeanor.

15 (2) Any employer who discharges or in any other manner
16 discriminates against any employee because such employee has made any
17 complaint to his or her employer, to the director, or ((his)) the
18 director's authorized representatives that he or she has not been paid
19 wages in accordance with the provisions of this chapter, or that the
20 employer has violated any provision of this chapter, or because such
21 employee has caused to be instituted or is about to cause to be
22 instituted any proceeding under or related to this chapter, or because
23 such employee has testified or is about to testify in any such
24 proceeding shall be deemed in violation of this chapter and shall, upon
25 conviction therefor, be guilty of a gross misdemeanor.

26 NEW SECTION. Sec. 6. A new section is added to chapter 49.46 RCW
27 to read as follows:

28 In any action or proceeding based on any act or omission on or
29 after the effective date of this section, no employer is subject to
30 liability or punishment for or on account of the failure of the
31 employer to pay minimum wages or overtime compensation under this title
32 if the employer pleads and proves that the act or omission complained
33 of was in good faith in conformity with and in reliance on any written
34 administrative rule, order, ruling, approval, or interpretation of the
35 department, or any administrative practice or enforcement policy of the
36 department with respect to the class of employers to which the employer
37 belonged. Such a defense, if established, is a bar to the action or

1 proceeding, notwithstanding that after the act or omission, the
2 administrative rule, order, ruling, approval, interpretation, practice,
3 or enforcement policy is modified or rescinded or is determined by
4 judicial authority to be invalid or of no legal effect.

5 NEW SECTION. **Sec. 7.** A new section is added to chapter 49.46 RCW
6 to read as follows:

7 A person, firm, or corporation aggrieved by a citation or notice of
8 assessment issued by the department of labor and industries under this
9 chapter may appeal the action or decision to the director of labor and
10 industries by filing notice of the appeal with the director within
11 thirty days of the department's issuance of a citation or notice of
12 assessment, otherwise the citation or notice of assessment is final and
13 binding. A notice of appeal filed under this section shall stay the
14 effectiveness of a citation or notice of the assessment of a penalty
15 pending review of the appeal by the director. Upon receipt of an
16 appeal, a hearing shall be held in accordance with chapter 34.05 RCW.
17 The director shall issue all final orders after the hearing. The final
18 orders are subject to appeal in accordance with chapter 34.05 RCW, with
19 the prevailing party entitled to recover reasonable costs and
20 attorneys' fees. Orders that are not appealed within the time period
21 specified in chapter 34.05 RCW are final and binding.

22 NEW SECTION. **Sec. 8.** A new section is added to chapter 49.46 RCW
23 to read as follows:

24 Nothing in this chapter prohibits an employee from initially
25 pursuing a private right of action against an employer for unpaid
26 wages. The remedies provided by this chapter are not available if any
27 person pursues a private right of action against an employer.
28 Similarly, an employee who files a wage claim with the department of
29 labor and industries is electing an administrative remedy and is barred
30 from pursuing a private right of action from that date forward.

31 NEW SECTION. **Sec. 9.** A new section is added to chapter 49.46 RCW
32 to read as follows:

33 The director may adopt rules to carry out the purposes of this
34 chapter. Such rules must narrowly construe this chapter.

1 NEW SECTION. **Sec. 10.** A new section is added to chapter 49.46 RCW
2 to read as follows:

3 The adoption of rules described in section 9 of this act must be
4 made before December 1st of any year, and the rules may not take effect
5 before the end of the regular legislative session in the next year.

6 NEW SECTION. **Sec. 11.** A new section is added to chapter 49.46 RCW
7 to read as follows:

8 The employment standards enforcement account is created in the
9 state treasury. All receipts from civil penalties assessed under this
10 chapter and chapter 49.48 RCW must be deposited in the account. Moneys
11 in the account may be spent only after appropriation. Expenditures
12 from the account may only be used for the employment standards program.

13 NEW SECTION. **Sec. 12.** A new section is added to chapter 49.48 RCW
14 to read as follows:

15 (1) An employer shall pay each employee all wages due on an
16 established payday for each pay period.

17 (2) An employer found to have violated a provision requiring
18 payment of wages under this chapter in a citation or notice of
19 assessment issued by the director of labor and industries or the
20 director's authorized representative: Must pay any wages due to the
21 employee and may be assessed a civil penalty of not less than one
22 hundred dollars and not more than one thousand dollars per employee who
23 is owed wages. The department shall not impose more than one civil
24 penalty per employee who is owed wages regardless of the duration of
25 the violation or number of provisions violated. A subsequent civil
26 penalty may be issued for a repeat violation that follows the
27 exhaustion of appeals by the employer for a first violation.

28 (3) The director of labor and industries may waive collection of a
29 portion or all of the penalties assessed under this chapter in favor of
30 the full payment of wages owed to the employee if the violation is
31 inadvertent, infrequent, or de minimus. Additionally, the department
32 shall not assess the penalty if it finds a violation to be inadvertent,
33 infrequent, or de minimus, the employer reimburses the employee, and
34 the employer promises to comply in the future.

35 (4) The director of labor and industries, or the director's
36 authorized representative, may require payment of unpaid wages and may

1 assess all civil penalties authorized by this section. When
2 considering the amount of penalties for multiple violations found in a
3 citation and notice of assessment, the director, or the director's
4 authorized representative, may consider the appropriateness of the
5 penalty with respect to the number of affected employees of the
6 employer being charged for each violation, the gravity of the
7 violations, the duration of the violations, the size of the employer's
8 business, the good faith of the employer, the history of previous
9 violations, and other relevant factors.

10 (5) Civil penalties imposed under this chapter shall be paid to the
11 director of labor and industries for deposit in the employment
12 standards enforcement account established under section 11 of this act.
13 The department shall use these funds exclusively for the employment
14 standards program.

15 (6) The employer shall pay wages and the civil penalty amount
16 assessed under this section within thirty days of receipt of the
17 assessment or notify the director of his or her intent to appeal the
18 citation or the assessment penalty as provided in section 14 of this
19 act.

20 **Sec. 13.** RCW 49.48.040 and 1987 c 172 s 1 are each amended to read
21 as follows:

22 (1) The department of labor and industries may:

23 (a) Conduct investigations to enforce section 12 of this act and to
24 ensure compliance with this chapter and chapter 49.46 RCW, upon
25 obtaining credible information indicating an employer may be committing
26 a violation under this chapter((s 39.12,)) and chapter 49.46((, and
27 49.48)) RCW((, conduct investigations to ensure compliance with
28 chapters 39.12, 49.46, and 49.48 RCW)). The director or the director's

29 authorized representative shall notify the employer before conducting
30 the investigation. Before conducting an inspection, the department
31 must notify the person whose premises and records are being inspected
32 that he or she has the right to refuse the inspection;

33 (b) Order the payment of all wages owed the workers and institute
34 actions necessary for the collection of the sums determined owed under
35 section 12 of this act; and

36 (c) ((~~Take assignments of wage claims and~~)) Prosecute actions for

1 the collection of wages ((of)) for persons who are financially unable
2 to employ counsel when in the judgment of the director of the
3 department the claims are valid and enforceable ((in the courts)).

4 (2) The director of the department or any authorized representative
5 may, for the purpose of carrying out RCW 49.48.040 through 49.48.080
6 and section 12 of this act: (a) Issue subpoenas to compel the
7 attendance of witnesses or parties and the production of books, papers,
8 or records; (b) administer oaths and examine witnesses under oath; (c)
9 take the verification of proof of instruments of writing; and (d) take
10 depositions and affidavits. If assignments for wage claims are taken,
11 court costs shall not be payable by the department for prosecuting such
12 suits.

13 (3) The director shall have a seal inscribed "Department of Labor
14 and Industries--State of Washington" and all courts shall take judicial
15 notice of such seal. Obedience to subpoenas issued by the director or
16 authorized representative shall be enforced by the courts in any
17 county.

18 (4) ((The director or authorized representative shall have free
19 access to all places and works of labor.)) Any employer or any agent
20 or employee of such employer who ((refuses the director or authorized
21 representative admission therein, or who)), when requested by the
22 director or authorized representative, willfully neglects or refuses to
23 furnish the director or authorized representative any statistics or
24 information pertaining to his or her lawful duties, which statistics or
25 information may be in his or her possession or under the control of the
26 employer or agent, shall be guilty of a misdemeanor.

27 (5) An action for relief under this section shall be commenced
28 within three years after the cause of action accrues, unless a shorter
29 period of time applies under law.

30 NEW SECTION. Sec. 14. A new section is added to chapter 49.48 RCW
31 to read as follows:

32 A person, firm, or corporation aggrieved by a citation or notice of
33 assessment issued by the department of labor and industries under this
34 chapter may appeal the action or decision to the director of labor and
35 industries by filing notice of the appeal with the director within
36 thirty days of the department's issuance of a citation or notice of
37 assessment, otherwise the citation or notice of assessment is final and

1 binding. A notice of appeal filed under this section shall stay the
2 effectiveness of a citation or notice of the assessment of a penalty
3 pending review of the appeal by the director. Upon receipt of an
4 appeal, a hearing shall be held in accordance with chapter 34.05 RCW.
5 The director shall issue all final orders after the hearing. The final
6 orders are subject to appeal in accordance with chapter 34.05 RCW, with
7 the prevailing party entitled to recover reasonable costs and
8 attorneys' fees. Orders that are not appealed within the time period
9 specified in chapter 34.05 RCW are final and binding.

10 NEW SECTION. **Sec. 15.** A new section is added to chapter 49.48 RCW
11 to read as follows:

12 Nothing in this chapter prohibits an employee from initially
13 pursuing a private right of action against an employer for unpaid
14 wages. The remedies provided by this chapter are not available if any
15 person pursues a private right of action against an employer.
16 Similarly, an employee who files a wage claim with the department of
17 labor and industries is electing an administrative remedy and is barred
18 from pursuing a private cause of action from that date forward.

19 NEW SECTION. **Sec. 16.** A new section is added to chapter 49.48 RCW
20 to read as follows:

21 The director of labor and industries may adopt rules to carry out
22 the purposes of this chapter. Such rules must narrowly construe this
23 chapter.

24 NEW SECTION. **Sec. 17.** A new section is added to chapter 49.48 RCW
25 to read as follows:

26 The adoption of rules described in section 16 of this act must be
27 made before December 1st of any year, and the rules may not take effect
28 before the end of the regular legislative session in the next year.

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