

# SENATE BILL REPORT

## SB 6867

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As of February 15, 2008

**Title:** An act relating to defining the term employ for minimum wage purposes.

**Brief Description:** Defining the term employ for minimum wage purposes.

**Sponsors:** Senators Holmquist and King.

**Brief History:**

**Committee Activity:** Labor, Commerce, Research & Development: 2/05/08.

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### SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

**Staff:** Ingrid Mungia (786-7423)

**Background:** Under the Washington Minimum Wage Act (MWA), employees are entitled to compensation for regular hours worked and for any overtime hours worked. Washington state law does not define hours worked or address the compensability of employee travel time. However, the Department of Labor & Industries (L&I), has established in rules that "hours worked" means all hours during which the employee is authorized or required to be on duty on the employer's premises or at a prescribed work place.

On October 18, 2007, the Washington Supreme Court (Court) released its decision in *Stevens v. Brink's Home Security*, holding that Brink's service and installation technicians who drove company vehicles from home to the first job site of the day and from the last job site of the day back home are entitled to compensation for the time they spent driving between home and the job site. The Court decided that driving in the company vehicle to and from home and job site constituted "on duty" time and that the company vehicle was a "prescribed workplace."

Factors the court considered to support its "on duty" finding included the extent to which Brink's restricts technicians' personal activities and controls technicians' time while driving, and Brink's policies which: mandated business-only use of the company vehicle; prohibited personal use; prohibited passengers other than employees; and required drivers to wear seatbelts, obey traffic and parking laws, lock the vehicle, and not carry alcohol.

The Court reasoned the company vehicle was a "prescribed workplace" because driving the truck was an integral part of the work performed by the technicians, in reaching customer homes and conveying the tools and equipment necessary to service and install security systems.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Since the Courts decision in Brinks, L&I has rescinded provisions of its administrative policy dealing with drive time that is now consistent with the decision.

**Summary of Bill:** The definition of "employ" excludes certain specified uses of employer provided vehicles. Specific uses excluded include the use of an employer's vehicle for travel by an employee and activities performed by an employee incidental to commuting, when the vehicle is used within the normal commuting area for the employer's business and part of the agreement between the employer and employee.

The stated intent of the legislation is to clarify the original intent of the law and applies to administrative and judicial actions pending since October 18, 2007, and future administrative and judicial actions. The language does not affect any employee rights that exist under a collective bargaining agreement.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill presents a rare opportunity to do good work for everyone. This bill is a win-win opportunity. It is a chance to show workers in this state that the Legislature actually cares about the interests of real people, who have real bills to pay, and real concerns about the economy slipping into a recession, rather than special interest groups. It is a win-win for both employees and employers. The employees get a benefit because they get to take a vehicle home and go to their first job site. Businesses are able to produce a better product, and consumers get a better product for their value. The Brinks court case is causing a lot of concern and confusion. Businesses need clear direction. Employees are concerned about what they see as a benefit, their vehicles. Employers and labor are represented here, but customers are not represented by this legislation. Don't want to preclude an employee who has been wronged by a travel arrangement from collecting from their employer.

CON: The Brinks decision was a victory for the labor community, because it clarifies the long standing L&I policy. Peoples vans are their offices. Several unions are seeking redress for back wages because of the court decision. Unions have come to two decisions: what Brinks upheld, we cannot change retroactivity, and take away workers rights. This bill wrongly narrows the terms: hours worked; and on duty, and does it retroactively. This bill directly overturns Brinks in overly broad terms. It is unrealistic to legislate away a workers right to compensation. There is not one solution.

OTHER: This is a complex and challenging arena. L&I and DOP is still trying to figure out if there is liability for the state and retroactivity. Rules could look at what is incidental. There are parts of the bill that could not be dealt with in rule: collective bargaining and application of retroactivity.

**Persons Testifying:** PRO: Doug Smith, AWB/Littler Mendelson; Tonia Neal, SMACNA; Al Fudge, AIR Test; Ed Kommers, Mechanical Contractors Association.

CON: Jeff Johnson, WSLC, AFI-CIO; Marty Garfinkel, citizen; David Johnson, WS Building Trades.

OTHER: Patrick Woods, L&I.

Signed in, Unable to Testify & Submitted Written Testimony: Vick Marin, WA Retail Association.